Lim Keck Eng v Tan Hoo Eng & Anor and another suit

HIGH COURT (KUANTAN) — CIVIL SUIT NOS 22NCVC-35–06 OF 2014 AND 22NCVC-80–11 OF 2014
MARIANA YAHYA J
23 MAY 2025

Contract — Fraud — Specific performance — Defendants sought specific performance of settlement agreement — Plaintiffs argued that settlement agreement was executed without free consent and under coercion, undue influence, and/or fraud by defendants — Plaintiffs sought annulment of settlement agreement — Whether plaintiffs fulfilled all criteria specified in ss 14, 15, 16 and 17 of the Contracts Act 1950 in relation to free consent, coercion, undue influence and fraud — Whether plaintiffs had proven their case on a balance of probabilities regarding particulars of fraud alleged — Contracts Act 1950 ss 14, 15, 16 & 17 — Evidence Act 1950 s 101

The dispute between the parties in the present case centred upon an allegation of debt owed by Tan Hoo Eng ('the first plaintiff') towards the first defendant and/or his company known as BS Sawmill Sdn Bhd ('BSS'). The first plaintiff denied such allegation, nonetheless, she had signed a settlement agreement dated 11 February 2014 ('the SA') and the supplementary agreement dated 3 March 2014 ('the SUA') which had the effect of transferring the properties owned by the first plaintiff's company known as Blue Star Moulding Sdn Bhd ('BSM') to the defendants for the purpose of settling the alleged debt. The plaintiffs argued that the SA and SUA were executed under vitiating factors instigated by the defendants against the plaintiffs, involving the elements of coercion, undue influence, and/or fraud but this argument was denied by the defendants by relying on, inter alia, the plaintiffs' contemporaneous conduct in issuing letters and attending several meetings with the defendants prior to the signing of the SA and SUA which clearly demonstrated that there were no coercion, undue influence, or fraud as alleged. Premised on these facts, both parties filed two separate suits. The plaintiffs filed Suit 80 in which the primary issue was the annulment of the SA which was allegedly signed by the plaintiffs without genuine consent due to the said vitiating factors. The plaintiffs submitted that the SA was tainted by illegality and therefore void; if so, the court had the authority to set it aside, rendering the transfer of property under the SA and SUA null and void. Furthermore, the plaintiffs alleged that there were no valid resolutions or director meetings by the third plaintiff (Dyera-Tim Sdn Bhd ('DTSB')) and BSM to execute the relevant documents. In this regard, the first plaintiff argued that the sixth defendant, an advocate and solicitor of the seventh defendant's law firm, had delivered the company resolutions to the first plaintiff without the first plaintiff's knowledge, consent,

or instructions. It was also argued that there was a non-compliance of the mandatory specific provisions of ss 64, 67, 132C, and 132E of the Companies Act 1965 (superseded by the Companies Act 2016) which would render the SA void. The defendants on the other hand filed Suit 35 for the specific performance of the SA and the SUA, the removal of the first plaintiff/third plaintiff's caveats on the properties under the SA, and damages.

Held, dismissing the plaintiffs' claim in Suit 80 with costs to be paid to each of the defendants separately, allowing the defendants' claim in Suit 35 with costs, and dismissing the plaintiffs' counterclaim in Suit 35 with costs:

(1) Section 101 of the Evidence Act 1950 stated that anyone seeking a court's judgment regarding a right or liability in law, based on the existence of specific facts, must prove that those facts existed. Naturally, when a person was responsible for proving any fact, the burden of proof lay with that person. In the present action, the plaintiffs shall prove each of their allegations as pleaded in the amended statement of claim. It was a fundamental principle of law that parties were bound by their pleadings, and the court would not decide on unpleaded matters. In this regard, the court in the present case ought to determine: (a) whether the plaintiffs had fulfilled all the criteria specified in ss 14, 15, 16(1) and 17 of the Contracts Act 1950 in relation to free consent, coercion, undue influence and fraud; and (b) whether the plaintiffs had proven their case on a balance of probabilities regarding the particulars of fraud alleged (see paras 76–77, 79–83 & 85).

(2) There was nothing wrong with the sixth defendant regarding the preparation of the resolutions. These resolutions were sent to BSM's company secretary for verification and were never rejected by the company secretary. The sixth defendant was not present at the office of the company secretary during the certification of those resolutions and therefore lacked knowledge of the interactions that occurred between the company secretary and the plaintiffs. Further, the cotemporaneous documents demonstrated a serious inconsistency regarding the threats and intimidation that the plaintiffs claimed to have received from the defendants. The contemporaneous documents and actions of the parties demonstrated that the transfer of the properties resulted from negotiations reflected in the SA based on the first plaintiff's offer made on 7 February 2014. In fact, the first plaintiff/DTSB fulfilled all these obligations (except for the redemption of one property). There was also no police report filed by the plaintiffs at the time when such intimidation and coercion were alleged to have occurred. Therefore, the plaintiffs' allegation that they were forced, intimidated, harassed, coerced and defrauded into signing the SA and SUA was misplaced and without basis

(see paras 90, 100, 102, 106, 146 & 162).

(3) The issues regarding non-compliance with the mandatory provisions of the Companies Act 1965 were not pleaded in the statement of claims by the plaintiffs and, therefore, the court refused to address the same. The court was of the view that if the court allowed the plaintiffs' submissions on the non-pleaded issues, it would create significant injustice to the defendants' case, as they were not given the opportunity to cross-examine the plaintiffs' witnesses on the relevant issues (see paras 123 & 162).

(4) On totality, based on the evidence, the court found that: (a) the plaintiffs had not proven all the elements under ss 14, 15, 16 and 17 of the Contracts Act 1950; (b) the SA and SUA were secured freely and were not tainted by illegality, coercion, intimidation, or under influence; (c) the first plaintiff was not someone who could be easily dominated, nor she was someone who could be deceived into signing a document, as such, the impression of 'non est factum' ought to be rejected; and (d) the defendants' evidence and/or narrative appeared to be more convincing than that of the plaintiffs (see para 162).

[Bahasa Malaysia summary

Pertikaian antara pihak-pihak dalam kes semasa tertumpu kepada dakwaan berkenaan hutang yang terhutang oleh Tan Hoo Eng ('plaintif pertama') terhadap defendan pertama dan/atau syarikatnya yang dikenali sebagai BS Sawmill Sdn Bhd ('BSS'). Plaintif pertama menafikan dakwaan sedemikian, namun begitu, dia telah menandatangani perjanjian penyelesaian bertarikh 11 Februari 2014 ('PP tersebut') dan perjanjian tambahan bertarikh 3 Mac 2014 ('PT tersebut') yang mempunyai kesan pemindahan harta-harta yang dimiliki oleh syarikat plaintif pertama yang dikenali sebagai Blue Star Moulding Sdn Bhd ('BSM') kepada defendan-defendan bagi tujuan menyelesaikan hutang tersebut. Plaintif-plaintif mendakwa bahawa PP dan PT tersebut telah ditandatangani di bawah faktor-faktor yang membatalkan kontrak yang dilakukan oleh defendan-defendan terhadap plaintif-plaintif, melibatkan unsur-unsur paksaan, pengaruh tak wajar, dan/atau fraud tetapi dakwaan ini telah dinafikan oleh defendan-defendan dengan bergantung kepada, antara lain, kelakuan sezaman plaintif-plaintif dalam mengutuskan surat-surat dan menghadiri beberapa mesyuarat dengan defendan-defendan sebelum menandatangani PP dan PT tersebut yang jelas menunjukkan bahawa tiada paksaan, pengaruh tak wajar atau fraud seperti yang didakwa. Berdasarkan fakta-fakta ini, kedua-dua pihak memfailkan dua saman berasingan. Plaintif memfailkan Saman 80 di mana isu utamanya adalah pembatalan PP tersebut yang didakwa telah ditandatangani oleh plaintif-plaintif tanpa kerelaan bebas disebabkan oleh faktor-faktor yang membatalkan kontrak tersebut. Plaintif-plaintif berhujah bahawa PP tersebut telah dicemari oleh keharaman

dan oleh itu tidak sah; maka, mahkamah mempunyai kuasa untuk mengenepikannya, menjadikan pemindahan harta-harta di bawah PP dan PT tersebut terbatal dan tidak sah. Tambahan pula, plaintif-plaintif mendakwa bahawa tiada resolusi-resolusi atau mesyuarat-mesyuarat pengarah yang sah oleh plaintif ketiga (Dyera-Tim Sdn Bhd ('DTSB')) dan BSM untuk menandatangani dokumen-dokumen yang berkaitan. Dalam hal ini, plaintif pertama berhujah bahawa defendan keenam, seorang peguam bela dan peguam cara yang beramal di bawah firma guaman defendan ketujuh, telah menyampaikan resolusi syarikat kepada plaintif pertama tanpa pengetahuan, persetujuan atau arahan plaintif pertama. Ia juga dihujahkan bahawa terdapat ketidakpatuhan peruntukan-peruntukan khusus mandatori ss 64, 67, 132C, dan 132E Akta Syarikat 1965 (digantikan oleh Akta Syarikat 2016) yang akan menjadikan PP tersebut tidak sah. Defendan-defendan pula memfailkan Saman 35 untuk pelaksanaan spesifik PP dan PT tersebut, penghapusan kaveat plaintif pertama/plaintif ketiga ke atas harta-harta di bawah PP tersebut, dan ganti rugi.

Diputuskan, menolak tuntutan plaintif-plaintif dalam Saman 80 dengan kos yang perlu dibayar kepada setiap defendan secara berasingan, membenarkan tuntutan defendan-defendan dalam Saman 35 dengan kos, dan menolak tuntutan balas plaintif-plaintif dalam Saman 35 dengan kos:

(1) Seksyen 101 Akta Keterangan 1950 menyatakan bahawa sesiapa yang menuntut penghakiman mahkamah mengenai hak atau liabiliti dalam undang-undang, berdasarkan kewujudan fakta tertentu, hendaklah membuktikan bahawa fakta tersebut wujud. Sememangnya, apabila seseorang bertanggungjawab untuk membuktikan apa-apa fakta, beban pembuktian terletak pada orang tersebut. Dalam tindakan semasa, plaintif-plaintif hendaklah membuktikan setiap dakwaan mereka seperti yang diplid dalam pernyataan tuntutan terpinda. Ia adalah prinsip asas undang-undang bahawa pihak-pihak terikat dengan pliding mereka, dan mahkamah tidak akan memutuskan perkara-perkara yang tidak diplid. Dalam hal ini, mahkamah dalam kes semasa harus menentukan: (a) sama ada plaintif-plaintif telah memenuhi semua kriteria yang dinyatakan dalam ss 14, 15, 16(1) dan 17 Akta Kontrak 1950 berhubung dengan kerelaan bebas, paksaan, pengaruh tak wajar dan fraud; dan (b) sama ada plaintif-plaintif telah membuktikan kes mereka di atas imbangan kebarangkalian mengenai butir-butir fraud yang didakwa (lihat perenggan 76–77, 79–83 & 85).

(2) Tiada kesalahan yang dilakukan oleh defendan keenam dalam penyediaan resolusi-resolusi tersebut. Resolusi-resolusi ini dihantar kepada setiausaha syarikat BSM untuk pengesahan dan tidak pernah ditolak oleh setiausaha syarikat tersebut. Defendan keenam tidak hadir di

pejabat setiausaha syarikat tersebut semasa perakuan resolusi-resolusi tersebut dibuat dan oleh itu dia tidak mempunyai pengetahuan tentang interaksi yang berlaku antara setiausaha syarikat tersebut dan plaintif-plaintif. Selanjutnya, dokumen-dokumen sezaman menunjukkan ketidakkonsistenan yang serius mengenai ugutan dan ancaman yang didakwa diterima oleh plaintif-plaintif daripada defendan-defendan. Dokumen-dokumen dan kelakuan sezaman pihak-pihak menunjukkan bahawa pemindahan harta-harta tersebut terhasil daripada rundingan seperti yang ditunjukkan dalam PP tersebut berdasarkan tawaran plaintif pertama yang dibuat pada 7 Februari 2014. Malah, plaintif pertama/DTSB memenuhi semua kewajipan ini (kecuali untuk penebusan bagi satu harta). Tiada juga laporan polis yang difailkan oleh plaintif-plaintif pada masa ugutan dan paksaan sedemikian didakwa berlaku. Oleh itu, dakwaan plaintif-plaintif bahawa mereka ditekan, diugut, diganggu, dipaksa dan ditipu untuk menandatangani PP dan PT tersebut adalah tersasar dan tidak berasas (lihat perenggan 90, 100, 102, 106, 146 & 162).

(3) Isu-isu mengenai ketidakpatuhan peruntukan-peruntukan mandatori Akta Syarikat 1965 tidak diplid dalam pernyataan tuntutan oleh plaintif-plaintif dan oleh itu, mahkamah enggan membincangkan isu-isu tersebut. Mahkamah berpendapat jika mahkamah membenarkan hujahan plaintif-plaintif mengenai isu yang tidak diplid, ia akan mewujudkan ketidakadilan yang ketara kepada kes defendan-defendan, kerana mereka tidak diberi peluang untuk menyoal balas saksi plaintif-plaintif mengenai isu-isu yang berkaitan (lihat perenggan 123 & 162).

(4) Secara keseluruhan, berdasarkan keterangan, mahkamah mendapati bahawa: (a) plaintif-plaintif gagal membuktikan semua elemen di bawah ss 14, 15, 16 dan 17 Akta Kontrak 1950; (b) PP dan PT tersebut telah ditandatangani secara sukarela dan tidak dicemari oleh keharaman, paksaan, ugutan, atau pengaruh tak wajar; (c) plaintif pertama bukanlah seseorang yang mudah dikuasai dan dia juga bukan seseorang yang boleh diperdaya untuk menandatangani sesebuah dokumen, oleh itu, tanggapan 'non est factum' patut ditolak; dan (d) keterangan dan/atau naratif defendan-defendan kelihatan lebih meyakinkan berbanding keterangan dan/atau naratif plaintif-plaintif (lihat perenggan 162).]

Cases referred to

Aseambankers Malaysia Bhd & Ors v Shencourt Sdn Bhd & Anor [2014] 4 MLJ 619; [2014] 2 CLJ 773, CA (refd)

Haji Nik Ishak bin Haji Nik Daud v Nik Zainab binti Nik Jaafar [1975] 2 MLJ 82, FC (refd)

Kerpa Singh v Bariam Singh [1966] 1 MLJ 38, FC (refd)

Sinnaiyah & Sons Sdn Bhd v Damai Setia Sdn Bhd [2015] 5 MLJ 1, FC (folld)

Legislation referred to

Companies Act 1965 (repealed by Companies Act 2016) ss 64, 67, 132C, 132E
Companies Act 2016
Contracts Act 1950 ss 14, 15, 16, 16(1), 17, 41, 42
Evidence Act 1950 s 101

Rabinder Singh (with Gurubachan Singh) (Rabin & Co) for the plaintiff.
Jacob Goldie (Jacob Goldie SS Chew) for the first to fifth defendants.
Ong Siew Wan (Ong Siew Wan, Andrew, David Ong & Wong) for the sixth to seventh defendants.

Mariana Yahya J:

INTRODUCTION

[1] There are two suits before this court, ie, Suit No 22NCVc-80–11 of 2014 ('Suit No 80') and 22NCVC-53–05 of 2014 ('Suit No 35'), which were consolidated and heard together by the order of this court dated 23 May 2025. In the course of the trial, all evidence presented by the plaintiffs' witnesses in Suit No 80 is to be considered as evidence for both Suit No 80 and Suit No 35. For ease of reference, the parties in Suit No 80 will be designated as plaintiffs and all other parties as defendants.

[2] The full trial lasted nearly five years, during which the plaintiffs called eight witnesses and the defendants called seven witnesses to support their respective cases. The witnesses are as follows:

(a) plaintiffs' witnesses:
    (i) SP1 — Tan Hoo Eng (THE);
    (ii) SP2 — Insp 1/19364 Muhammad Noorariff Shah bin Zainuddin;
    (iii) SP3 — Lim Aun Soon (LAS);
    (iv) SP4 — Foo Yau Geem ('FYG');
    (v) SP5 — Lim Hui Jin (LHJ);
    (vi) SP6 — Choo Lai Yee ('CLY');
    (vii) SP7 — Tan Soon Lai (TSL); and
    (viii) SP8 — Kelly Lau Sewee Kean ('Kelly').

(b) defendants' witnesses:

(i) SD1 — Eric Tham Kian Hai (Eric);

(ii) SD2 — Muhammad Azuan Abdul Aziz (Azuan);

(iii) SD3 — Moses Lim Kian Loong (Moses);

(iv) SD4 — Tan Kai Kiang (TKK/Ah Kiang);

(v) SD5 — Lim Keck Eng ('LKE');

(vi) SD6 — Dato' Abdul Halim bin Jalil ('DH'); and

(vii) SD7 — Heng Kiang Hai (HKH).

[3] This judgment will be based on the issues pled and claimed by the plaintiffs in Suit No 80, along with Suit No 35, specifically concerning the issue of:

(a) whether there was coercion, duress, undue influence, and/or fraud on the plaintiffs by the defendants in executing the settlement agreement;

(b) if this court's finding in (a) is affirmative, there is no need for this court to address the issues raised by the plaintiff in Suit No 35 (the defendants in Suit No 80) because those same issues have been addressed in their defence, except for the reliefs sought by the defendant in Suit 35; and

(c) the oral evidence by all the witnesses in Suit No 80 will be used to determine and answer questions in both cases.

[4] This court, in arriving at its decision, has carefully considered and evaluated all the evidence presented by the parties through these extensive documents:

(a) notes on proceedings — 8231 pp;

(b) plaintiffs' written submissions (four sets) — 311 pp;

(c) D1-D5 written submissions (three sets) — 567 pp;

(d) D6-D7 written submissions (four sets) — 47 pp;

(e) bundle of documents — 273 volumes;

(f) exhibits — 278 exhs; and

(g) bundles of authorities.

THE PLAINTIFFS' CASE (SUIT NO 80)

[5] The primary issue presented to this court by the plaintiffs is the annulment of a purported settlement agreement ('SA') dated 11 February

2014, which they signed without genuine consent. The plaintiffs argue that the purported SA was executed under vitiating factors instigated by the defendants, involving elements of coercion, undue influence, and/or fraud perpetrated against the plaintiffs by the defendants. The plaintiffs assert that the signing of both the SA and the supplementary agreement ('SUA') dated 3 March 2014 was involuntary, impacting the validity of the SA. It is claimed that the purported SA is tainted by illegality and, therefore, void; if so, this court has the authority to set it aside, rendering the property transfers null and void.

[6] In addition, the plaintiffs in their re-amended statement of claim (at para 22) alleged that there was no valid, lawful, and proper resolution regarding the third plaintiff (Dyera-Tim Sdn Bhd, 'DTSB') and Blue Star Moulding Sdn Bhd ('BSM') concerning the execution of documents for the aforementioned companies. Therefore, the plaintiffs contend that non-compliance with the mandatory specific provisions of ss 64, 67, 132C, and 132E of the Companies Act 1965 (superseded by the Companies Act 2016) would render the purported SA void.

[7] To substantiate the arguments regarding the plaintiffs, they pleaded five material dates, ie, 27 January 2014, 7 February 2014, 11 February 2014, 17 February 2014, and 3 March 2014 to demonstrate their claims and allegations against the defendants.

[8] The plaintiffs alleged that the dispute began on 27 January 2014, whereby at about 11am, the third and fourth defendants came to the premises of the third plaintiff and threatened the first plaintiff and falsely alleged that the first plaintiff had cheated the first defendant of millions of Ringgit. The first plaintiff was shocked and surprised at the allegations and refuted the said allegations. The third and fourth defendants became very aggressive and continued to intimidate, harass and threaten the first plaintiff.

[9] On the afternoon of the same day, the first plaintiff's son, Lim Hui Jin ('Mr Choo' — SP5), and Lau Sewee Kean (SP8) were present at the premises and witnessed the intimidation, threats, harassment, and aggression by the third and fourth defendants against the first plaintiff.

[10] The third and fourth defendants continued their unlawful, improper, and wrongful threats, intimidation, and harassment until about 11:30pm, forcing the first plaintiff to agree to amicably settle the matter with the first defendant.

[11] The third and fourth defendants refused to leave the premises of the third plaintiff until they received cheques for RM5m, which, according to them, would constitute a full and final settlement of the amount allegedly owed

A by the first plaintiff to the first defendant.

[12] As a result, the first plaintiff had no choice but to issue five postdated cheques of RM1m each in favor of Blue Star Sawmill Sdn Bhd ('BSS'). The plaintiffs assert that they did not owe any money amounting to RM5m or any other sum to BSS.

[13] On the same day, ie 27 January 2014, the third and fourth defendants also compelled and coerced the first plaintiff into issuing cheques totaling RM10m for what the third and fourth defendants alleged were payments of debts owed by BSM. The first plaintiff, unwillingly and under threat, duress, and harassment, was compelled to issue post-dated cheques for the total sum of RM10m. Only after receiving the fifteen post-dated cheques did the third and fourth defendants leave the premises of the third plaintiff.

[14] During the incident mentioned above, along with the alleged harassment, intimidation, and threats by the third and fourth defendants, it was claimed that the fourth defendant dictated to Mr Lim Hui Jin (SP5) a purported draft agreement without the consent of the first plaintiff ('first draft agreement'). Mr Lim had no choice but to comply with the demands of the third and fourth defendants. The first plaintiff was also compelled against her wishes and free will to sign the first agreement dictated by the fourth defendants.

[15] On 30 January 2014, around 10.30am, the third defendant, accompanied by the second defendant (SD3), the son of the first defendant and Dato' Abdul Halim bin Jalil from Pahang, the fifth defendant (SD6), arrived at the third plaintiff's premises to meet with the first plaintiff. Present at the time were Mr Lim Hui Jin and Miss Choo Lai Yee (SP6). During this meeting, the second, third, and fifth defendants returned five postdated cheques issued on 27 January 2014, and aggressively demanded that, contrary to their previous agreement on 27 January 2014, the dispute between the first plaintiff and the first defendant be resolved with a payment of RM25m. They claimed the first plaintiff owed the first defendant RM30m, which the plaintiff firmly denied as false. The first plaintiff informed the second, third, and fifth defendants that she did not owe the amount they were demanding, a statement they refused to accept.

[16] On the same day, the second, third, and fifth defendants returned the ten post-dated cheques amounting to RM10m. They also provided a letter dated 30 January 2014, from the first defendant to the third plaintiff, rejecting the purported agreement dated 27 January 2014.

[17] It is the plaintiffs' pleaded case that the second, third, and fifth

defendants coerced the first plaintiff into issuing nine postdated cheques totaling RM9,759,742.32, which purportedly represents the total amount owed by BSM to BSS.

[18] The plaintiffs alleged that the fifth defendant threatened the first plaintiff, stating that he would ensure the first and second plaintiffs would be placed in the police lockup for three days, preventing them from celebrating the Chinese New Year reunion dinner with their family that evening. The fifth defendant also claimed that the CPO of Perak was his personal friend. Upon hearing this, the first plaintiff, Mr Lim Hui Jin, and Miss Choo Lai Yee felt extremely frightened. The Chinese New Year for 2014 fell on 31 January 2014.

[19] The first plaintiff informed the second, third, and fifth defendants that she did not owe the alleged amount and that the plaintiffs did not possess the sum of RM25m. The second, third, and fifth defendants then instructed the first plaintiff to transfer the immovable properties to the first defendant, as well as the vehicles owned by BSM. At that time, the first defendant, who was the director and shareholder of BSM, failed to obtain a proper resolution from BSM to facilitate the transfers, as there were no directors' meetings held for the company. Additionally, the first defendant was not present on 30 January 2014. In any event, there was no assertion that BSM owed any money to the first defendants.

[20] On 7 February 2014, the first, second, third, and fifth defendants visited the premises of the third plaintiff. The second defendant dictated a new draft agreement to Miss Choo Lai Yee without the consent of the first plaintiff ('second draft agreement'). The terms and conditions specified by the second defendant were again completely different from those in the first draft agreement and what was requested on 27 January 2014. In this regard, the first, second, third, and fifth defendants further demanded that all the alleged outstanding sums owed by BSM be paid personally by the first plaintiff.

[21] On the same day, the first defendant stopped the second plaintiff as he was passing by the third plaintiff's premises and showed him a purported police report allegedly lodged by the first defendant at the Bukit Aman Police Station against the plaintiffs.

[22] Furthermore, the first defendant informed the first plaintiff and the staff of the third plaintiff that the first plaintiff should be aware that he is a dangerous gangster, which further frightened the first plaintiff.

[23] On 11 February 2014, the first, second, third, and fifth defendants visited the premises of the third plaintiff, accompanied by the sixth defendant, an associate from the seventh defendant's law firm. During this visit, a

purported settlement agreement was presented to the first plaintiff, who was unaware of its contents. Additionally, the terms and conditions were not prepared with the first plaintiffs instructions, knowledge, or consent.

[24] The plaintiffs further contended that the sixth defendant had no right to prepare a settlement agreement on behalf of the first plaintiff, who had never engaged him for this purpose. The sixth defendant was not appointed as the plaintiffs' solicitor. Additionally, the contents of the purported settlement agreement were never explained to the first plaintiff, who is not familiar with legal terminology.

[25] Additionally, the first plaintiff was not given the opportunity to seek independent legal counsel from a solicitor of her choice. The agreement also lacked any clause stating that the first plaintiff had received independent advice from her solicitor.

[26] The first plaintiff felt pressured by all the defendants, including the biased sixth defendant, a solicitor for the defendant, who favored the first defendant over the first plaintiff.

[27] The first time the first plaintiff saw the sixth defendant was on 2 November 2014, and even on that day, the first plaintiff did not appoint a solicitor to prepare the alleged settlement agreement.

[28] The defendants coerced the first plaintiff into signing blank documents, including two alleged statutory declarations, without explanation, under duress, and without the presence of a commissioner of oaths. The first plaintiff was not informed about the content or implications of the documents she signed.

[29] The first plaintiff asserts that she did not voluntarily, willingly, or lawfully execute any documents claiming to transfer the immovable properties owned by the plaintiffs. Additionally, no valuable consideration was paid for the transfer of these properties, nor was any valuation conducted by a valuer.

[30] On 3 March 2014, the second and fifth defendants arrived at the premises of the third plaintiff and compelled the first plaintiff, acting on behalf of the third plaintiff, to sign a purported supplementary agreement. This agreement was also not drafted in line with the first and third plaintiffs' instructions, knowledge, or consent.

[31] The plaintiffs also alleged that there was no valid, lawful, and proper

resolution between the third plaintiff and BSM regarding the execution of the documents related to the said companies. In fact, no valid directors' meetings were called for the purpose of passing any resolution. Furthermore, the secretary of the company did not prepare the purported resolution of the third plaintiff and BSM. The purported resolutions were given to the first plaintiff by the sixth defendant and were prepared without the knowledge, consent, or instruction of the plaintiffs. The plaintiffs do not know who prepared them but believe they were created by the sixth defendants at the direction of the first defendant.

[32] The first plaintiff asserts that the registration numbers of the cars WPQ 8666, WUD 8666, WWG 115, WXN 115, and WXT 9805, along with the forklifts registered under CCV 9446, CAW 1063, CDA 5782, CDG 2370, CDC 9146, CAV 2579, and CBX 1986, are registered in the name of BSM. The defendants, through their aforementioned conduct, compelled and threatened the first plaintiff to execute transfer forms on behalf of the company and also forced the first plaintiff to pay the outstanding balance owed to the finance firms by the company, totaling RM328,653.08, which is not the burden or responsibility of the first plaintiff.

[33] No director meetings were convened by the first plaintiff. The first plaintiff was forced to sign a resolution dated 11 February 2014, which was prepared by the first defendant and/or their representative and/or agent, and presented to the first plaintiff on 5 March 2014 by the sixth defendant. The first plaintiff claims that the value of the cars in question is RM1.1m. The first plaintiff is uncertain whether the cars have been transferred or not.

[34] On the same day, the first and second plaintiffs were compelled by the sixth defendant to execute resolutions that were reportedly prepared by the third plaintiff. The resolutions dated 11 February 2014 were never prepared by the secretary of the companies involved; instead, they were created by the sixth defendant and then sent to the secretary of the company by the sixth defendant on 5 March 2014.

[35] The first defendant never provided any notice of demand regarding the alleged outstanding amount or purported debt to the plaintiffs and BSM. The plaintiffs assert that the value of the immovable properties seized and taken by the first defendant is approximately RM15m.

[36] The first plaintiff was also compelled to issue four post-dated cheques totaling RM1m each to the first defendant. The total value of the stock owned by the third plaintiff and BSM, which was seized and stolen by force, threats,

harassment, and intimidation, is approximately RM32m. The plaintiffs assert that the total value of the properties seized and money taken by the first defendant is around RM52m.

[37] The plaintiffs aver that the alleged debt purportedly owed to the first defendant, if true, was owed by the third plaintiff and BSM in their dealings with BSS and the first and second plaintiffs had nothing to do with the first defendant and had no business dealing with the first defendant.

[38] The vehicles are owned and registered under BSM, where both the first plaintiff and the first defendant serve as shareholders and directors, distinct from the plaintiffs. The estimated value of the vehicles and machinery transferred to the first defendant is approximately RM2.6m.

[39] The plaintiffs are uncertain as to whether the transfers of the aforementioned vehicles will be impacted. The remaining hire purchase balance, held by BSM but remitted by the first plaintiff, amounted to RM328,653.08.

[40] The plaintiffs assert that they were subjected to extreme duress and undue influence by the defendants, which diminished their autonomy and enabled the defendants to fulfill their malicious intentions. Furthermore, the plaintiffs contend that all the defendants engaged in unlawful and improper conduct by threatening, intimidating, harassing, oppressing, and coercing the first plaintiff to sign documents and/or perform actions contrary to her free will and under duress.

[41] The plaintiffs allege that the defendants have committed fraud and deceived them. Additionally, the plaintiffs adopt and rely on all the contents of their statement of claim as specifics of fraud detailed in paras 36(a)-(h) of the aforementioned statement of claim. This court reproduces the specifics of fraud asserted by the plaintiffs as follows:

PARTICULARS OF FRAUD

(a) The 1st Defendant and/or his agents and/or his servants falsely and fraudulently misrepresented to the plaintiffs that the plaintiffs, particularly the 1st plaintiff, owed money to the 1st Defendant and/or his company, BS Sawmill Sdn Bhd. (BSS);

(b) The 1st Defendant and/or his agents and/or his servants unlawfully, wrongfully, and improperly threatened, intimidated, harassed, coerced, duressed, and compelled the plaintiff to issue cheques and transfer movable and immovable properties belonging to the plaintiffs and BS Moulding to the 1st Defendant personally, which constituted a breach of

the fiduciary duty owed by the 1st Defendant to BS Moulding. By doing so, he took personal benefit from this action, thereby committing equitable fraud against her and BS Moulding;

(c) The defendants acted unconscionably and the 1st Defendant unjustly enriched himself to the detriment of the plaintiffs;

(d) The representatives and agents of the 1st Defendant threatened the 1st plaintiff and her family members, claiming they had influence and connections with the police to ensure their detention, especially on the eve of Chinese New Year, 30.1.2014.

(e) Resulting in significant economic and financial losses for the plaintiffs, thus depriving them of their lifelong earnings;

(f) Engaging in virtual extortion against the plaintiffs by seizing their movable and immovable properties valued at approximately RM52 million without demonstrating any amount due, owed, or payable by the plaintiffs to the 1st Defendant and/or his company, BSS;

(g) The 1st Defendant and/or his agents and/or his servants fraudulently caused the 1st plaintiff to pay the alleged debts owed by BS Moulding to the 1st Defendant's company, BSS; and

(h) The plaintiffs also rely on the pleaded case as part of the particulars of fraud.

[42] The reliefs sought by the plaintiffs are as stated in the re-amended statement of claim reproduced in Bahasa Malaysia as follows:

MAKA Plaintif-Plaintif menuntut:

(a) Satu Deklarasi bahawa semua dokumen-dokumen dan/ atau perjanjian-perjanjian dan/atau pemindahan hartanah-hartanah tak alih iaitu

(i) PN154265, Lot No 774 Mukim Hulu Kinta, Daerah Kinta, Negeri Perak;

(ii) PN 57802, Lot No 106702, Mukim Hulu Kinta, Daerah Kinta, Negeri Perak;

(iii) GRN 18054, Lot No 110482, Mukim Hulu Kinta, Daerah Kinta, Negeri Perak;

(iv) PN 48431 Lot 56897 Mukim Batu, Daerah Kuala Lumpur, Negeri Wilayah Persekutuan;

(v) GM3515 Lot No 8639, Mukim Teluk Panglima Garang, Ulu Langat, Selangor;

(vi) GM 3516, Lot No 8640, Mukim Teluk Panglima Garang, Ulu Langat, Selangor

(kemudian dirujuk sebagai Hartanah-Hartanah) kepunyaan Plaintif-Plaintif adalah batal, tidak sah, salah di sisi undang-undang dan tiada kesan undang-undang;

(b) Bahawa semua borang-borang Memorandum Pindahmilik berkaitan dengan Hartanah-Hartanah iaitu:

i. PN154265, Lot No 774 Mukim Hulu Kinta, Daerah Kinta, Negeri Perak;

ii. PN 57802, Lot No 106702, Mukim Hulu Kinta, Daerah Kinta, Negeri Perak;

iii. GRN 18054, Lot No 110482, Mukim Hulu Kinta, Daerah Kinta, Negeri Perak;

iv. PN 48431 Lot 56897 Mukin Batu, Daerah Kuala Lumpur, Negeri Wilayah Persekutuan;

v. GM3515 Lot No, 8639, Mukim Teluk Panglima Garang, Ulu Langat, Selangor;

vi. GM 3516, Lot No 8640, Mukim Teluk Panglima Garang, Ulu Langat, Selangor;
dan semua permohonan berkaitan adalah secara frod, tanpa balasan, batal dan tak sah di sisi undang-undang dan tiada kesan undang-undang;

(c) Satu deklarasi dan perintah-perintah bahawa semua dokumen yang dikatakan dilaksanakan seolah-olah oleh Plaintif-Plaintif adalah terbatal, tidak sah dari segi undang-undang dan tidak berkesan;

(d) Satu deklarasi bahawa semua pindahmilik terhadap semua kenderaan-kenderaan tersebut termasuk 7 forklift dan Moulding Machineries adalah terbatal, tidak sah dari segi undang-undang dan tidak berkesan;

(e) Satu perintah bahawa sekiranya pindahmilik hartanah-hartanah tak alih tersebut, semua kenderaan-kenderaan termasuk termasuk 7 Forklift dan Moulding Machinaries dipindahmilik semula kepada Plaintif-Plaintif dan BS Moulding masing-masing;

(f) Injunksi-injunksi terhadap Defendan Pertama menahan dan melarang Defendan Pertama dan/atau wakil-wakilnya dari mengemukakan Memorandum Pindahmilik Hartanah-Hartanah tersebut kepada Pejabat Tanah dan Galian berkenaan dan/atau mana-mana pihak berkuasa lain;

(g) Satu perintah bahawa kaveat-kaveat persendirian terhadap Hartanah-Hartanah tersebut oleh Defendan Pertama dan/atau ejen-ejennya dibataikan atau diketepikan;

(h) Gantirugi untuk frod dan urusan-urusan tidak sah dan tidak wajar;

(i) Gantirugi tindakan menyalahi undang-undang, tidka wajar dan salah seperti ugutan, penindasan, intimidasi, ancaman dan desakan oleh semua Defendan-Defendan;

(j) Mahkamah ini membenarkan gantirugi teruk dan teladan terhadap semua Defendan-Defendan;

(k) Perintah-Perintah untuk memberi kesan kepada permintaan-permintaan tersebut diatas;

(l) Kos dan apa-apa perintah lain dianggap wajar dan sesuai oleh Mahkamah ini;

(m) Relif-relif lanjut atau lain yang dianggap adil dan sesuai; dan

(n) Kos dan apa-apa perintah lanjut yang dianggap wajar oleh Makamah ini.

(o) Forklift dan Moulding Machinaries dipindahmilik semula kepada Plaintif-Plaintif dan BS Moulding masing-masing;

(p) Injunksi-injunksi terhadap Defendan Pertama menahan dan melarang Defendan Pertama dan/atau wakil-wakilnya dari mengemukakan Memorandum Pindahmilik Hartanah-Hartanah tersebut kepada Pejabat Tanah dan Galian berkenaan dan/atau mana-mana pihak berkuasa lain;

(q) Satu perintah bahawa kaveat-kaveat persendirian terhadap Hartanah-Hartanah tersebut oleh Defendan Pertama dan/atau ejen-ejennya dibatalkan atau diketepikan;

(r) Gantirugi untuk frod dan urusan-urusan tidak sah dan tidak wajar;

(s) Gantirugi tindakan menyalahi undang-undang, tidak wajar dan salah seperti ugutan, penindasan, intimidasi, ancaman dan desakan oleh semua Defendan-Defendan;

(t) Mahkamah ini membenarkan gantirugi teruk dan teladan terhadap semua Defendan-Defendan;

(u) Perintah-Perintah untuk memberi kesan kepada permintaan-permintaan tersebut diatas;

(v) Kos dan apa-apa perintah lain dianggap wajar dan sesuai oleh Mahkamah ini;

(w) Relif-relif lanjut atau lain yang dianggap adil dan sesuai; dan

(x) Kos dan apa-apa perintah lanjut yang dianggap wajar oleh Makamah ini.

THE CASE OF THE FIRST DEFENDANT (IN SUIT NO 35, THE PLAINTIFF)

[43] The case of the first defendant begins with him and the first plaintiff. In 2006, they established a company called Blue Star Moulding Sdn Bhd ('BSM'), aimed at producing moulding products from sawn timber at LKE's sawmill located in Karak.

A **[44]** At the same time, BSS was established to carry out sawmilling operations, with the first defendant and the second defendant acting as its directors and shareholders.

B **[45]** It is an indisputable fact that BSM was managed entirely by the first plaintiff through her office in Ipoh, with the assistance of DTSB staff and individuals appointed by her at the Karak factory.

C **[46]** A dispute arose at the end of 2013 when the first defendant discovered that BSM workers were erasing references to timber parcels belonging to BSS and substituting them with Worldwide Timber Sdn Bhd ('WDW') references.

[47] This behavior caused the first defendant to lose trust in the first plaintiff and to cease any further business with the first plaintiff.

D

[48] Thereafter, the first and second defendants began to investigate BSM's business activities and discovered various wrongdoings of the first plaintiff, including selling BSM products and siphoning the sales proceeds to DTSB, starting with the sales to Mediarex.

E

[49] After the incident, several mutual friends of the first defendant and the first plaintiff attempted to assist both parties as 'go-betweens' (middlemen) to hear the first plaintiffs version.

F

[50] In this respect, the fourth defendant (SD1) and the third defendant (SD4) met with the first plaintiff on 27 January 2014, and left after realising that the first plaintiff was insincere. Subsequently, the first plaintiff called the fourth defendant back and requested that he return to her office, where she presented him with a written proposal to deliver to the first defendant, along with a cheque for RM15m.

G

[51] This proposal was rejected by the first defendant on 30 January 2014, prompting the first plaintiff to invite the first defendant to a meeting on 7 February 2014. During that meeting, the first plaintiff revised the proposal, which was subsequently accepted by the first defendant, resulting in a written mutual agreement to settle the matter, specifically referred to as the settlement arrangement.

H

I **[52]** The first defendant avers that no notice of demand will be required from the parties, as all disputes between them have been settled amicably through their meetings and discussions from January to March 2014.

[53] Subsequently, a formal settlement agreement was prepared by the law

firm Tetuan Azrul Afifi ('AAA') (D7), with the sixth defendant serving as the solicitor overseeing the matter. The sixth defendant met with the first plaintiff on 11 February 2014, presenting a draft agreement that was later amended to meet the first plaintiff's requirements. Following the necessary amendments requested by the first plaintiff, the SA dated 11 February 2014, was duly executed by the first and third defendants and the first defendant.

[54] Additionally, a SUA dated 3 March 2014 was executed among the first defendant, the first plaintiff, and the third plaintiff. This SUA was initiated at the request of the first plaintiff for specific modifications to the SA.

[55] Thereafter, the first and third plaintiffs performed all their obligations under the SA and SUA, prior to this action, save and except for the redemption of one parcel of land described as PN 154265 Lot 774, charged to CIMB Bank Bhd, to enable this property to be transferred to the first defendant.

[56] However, on 15 May 2014, the sixth defendant discovered that the first plaintiff had entered a caveat on several properties under the SA.

[57] Therefore, the first defendant instructed the sixth defendant to issue a notice to the first plaintiff for the removal of the caveat. This notice was issued on 24 May 2014.

[58] A few months later, after fulfilling almost all her obligations under the SA and supplementary agreement, the first plaintiff filed an action in the High Court at Ipoh ('Ipoh Suit'), which included injunctive relief without any legal notice. Her claim is based on threats, intimidation, undue influence, fraud, and so on.

[59] The first defendant filed an action in the High Court in Kuantan following the notice dated 24 May 2014.

[60] On 14 October 2014, the High Court at Ipoh transferred the first, second, and third defendants' civil action from Ipoh to the High Court at Kuantan, where it was registered as Suit No 80.

[61] The first defendant's claim is limited to the specific performance of the settlement agreement and supplementary agreement, the removal of the first/third defendant's caveats on the properties under the SA, and damages.

[62] Prior to filing the HC Ipoh Suit, the plaintiffs never denied or disputed the SA or their obligations specified under it. The issuance of several cheques by the plaintiffs and correspondence between the parties demonstrate that the SA

is valid and binding on both parties. The issues of threats, intimidation, undue influence, fraud, etc, were never raised by the first plaintiff at the relevant time.

[63] The plaintiffs' contemporaneous conduct in issuing letters and attending several meetings with the defendants prior to the signing of SA and SUA clearly demonstrates that there were no threats, intimidation, duress, coercion, undue influence, or fraud as alleged.

[64] The defendants contended that the plaintiffs breached the SA and SUA, causing losses and significant damage to the defendants. In this Suit No 35, the reliefs sought by the plaintiff (first defendant in Suit No 80) against the defendants (plaintiffs in Suit No 80) are as follows: (reproduced para 15 from the original statement of claim):

> 15. JUSTERU ITU, Plaintif menuntut Penghakiman dan Perintah-Perintah berikut:
>
> 15.1 Satu perisytiharan bahawa Defendan-Defendan hendaklah melaksanakan secara sepsifik (Perlaksanaan Spesifik) Perjanjian Penyelesaian bertarikh 11.2.2014 (Settlement Agreement dated 11.2.2014) dan Perjanjian Tambahan bertarikh 3.3.2014 (Supplementary Agreement dated 3.3.2014).
>
> 15.2 Kaveat berikut dibatalkan:
>
> 15.2.1 Kaveat persendirian Tan Hoo Eng yang didaftarkan pada 14.5.2014 melalui No Perserahan 6628/2014 di atas hartanah PN 57802, Lot 106702, Mukim Hulu Kinta, Daerah Kinta, Hulu Kinta, Perak.
>
> 15.2.2 Kaveat persendirian Tan Hoo Eng yang didaftarkan pada 14.5.2014 melalui No Perserahan 6628/2014 di atas hartanah GRN 18054, Lot 110482, Mukim Hulu Kinta, Daerah Kinta, Hulu Kinta, Perak.
>
> 15.2.3 Kaveat persendirian Tan Hoo Eng yang didaftarkan pada 14.5.2014 melalui No Perserahan 6629/2014 di atas hartanah PN 154265, Lot 774, Mukim Hulu Kinta, Daerah Kinta, Hulu Kinta, Perak.
>
> 15.2.4 Mana-mana kaveat yang lain.
>
> 15.3 RM1,510,412.62 berserta dengan faedah pada kadar 5% setahun dari 31.3.2014 sehingga penyelesaian penuh.
>
> 15.4 RM4,680,000.00 berserta dengan faedah pada kadar 5% setahun dari 11.2.2014 sehingga penyelesaian penuh.
>
> 15.5 Masa ditetapkan oleh Mahkamah ini untuk Defendan-Defendan meatuhi Perjanjian Penyelesaian bertarikh 11.2.2014 dan Perjanjian Tambahan bertarikh 3.3.2014.
>
> 15.6 Perlaksanaan Spesifik dan/atau Penghakiman untuk bayaran-bayaran berikut:

15.6.1 RM1 juta pada atau sebelum 30.6.2014 berserta faedah pada kadar 5% setahun dari 1.72014 sehingga ke penyelesaan penuh.

15.6.2 RM1 juta berserta dengan faedah pada kadar 5% setahun dari 31.8.2014 sehingga penyelesaian penuh.

15.6.3 RM1 juta berserta dengan faedah pada kadar 5% setahun dari 1.11.2014 sehingga penyelesaian penuh.

15.6.4 RM1 juta berserta dengan faedah pada kadar 5% setahun dari 1.1.2015 sehingga penyelesaian penuh.

15.7 Gantirugi ditaksirkan bagi kerosakan, kerugian dan kehilangan kegunaan.

15.8 Gantirugi teruk dan teladan.

15.9 Faedah atas gantirugi pad akadar 5% setahun dari tarikh yang ditetapkan oleh Mahkamah ini sehingga penyelesaian penuh.

15.10 Plaintif diberi kebebasan untuk memohon untu relif-relif lanjut.

15.11 Lain-lain perintah yang dianggap perlu dan sesuai oleh Mahkamah ini.

[65] The first and third plaintiffs in Suit No 80 also filed a counterclaim against the first defendant in Suit No 35, as specified in para 20 of their amended defence and counterclaim. The relief sought by the first and third plaintiffs in Suit No 80 for Suit No 35 is similar to that sought in Suit No 80.

THE SIXTH AND SEVENTH DEFENDANTS' DEFENCE

[66] The sixth and seventh defendants refuted all allegations made by the plaintiffs and asserted that the sixth defendant has never, at any relevant time, claimed to represent the first plaintiff and/or the third plaintiff. Throughout all relevant periods, the sixth defendant represented the first defendant and, in that capacity, drafted the settlement agreement.

[67] Regarding the SA, the sixth defendant clarified its contents and effects to the first plaintiff. Throughout the negotiation process, the first plaintiff was accompanied and assisted by several staff members.

[68] From the questions asked and points raised by the first plaintiff during these negotiations, the impression conveyed to the sixth defendant was that the first plaintiff was fully aware of the terms and implications of the SA.

[69] The sixth defendant did not impede or deny the first plaintiff any opportunity to seek legal advice. In this regard, the sixth defendant instructed that the SA needed to be executed swiftly, and the first plaintiff adopted this same attitude.

A **[70]** There was no compulsion from the sixth defendant regarding the first plaintiff. Additionally, the sixth defendant did not believe that the first plaintiff was being forced to execute the SA. In this regard, during the meeting on 11 February 2014, the first plaintiff requested changes to the SA, and these changes were agreed upon by the first defendant. The necessary amendments
B were then made by the sixth defendant before the execution of the SA.

[71] At all relevant times, the sixth defendant acted reasonably and prudently, as expected of a member of the Malaysian Bar.

C

[72] The sixth defendant also denied the allegations made by the plaintiffs in para 20 of the re-amended statement of claim and stated that the first plaintiff voluntarily executed certain transfer documents in accordance with the SA. In this regard, the sixth and seventh defendants asserted that it was, among other
D things, an express term of the SA that real properties, vehicles, and stocks in trade be transferred by the first plaintiff. Additionally, on 17 February 2014, the sixth defendant attended the office of the third plaintiff again to meet with the first plaintiff and obtain her signature on the necessary transfer documents.

E **[73]** The sixth and seventh defendants also deny having drafted any part of the agreement with the SA dated 11 February 2014. In fact, around 3 March 2014, a draft SUA was sent to the sixth and seventh defendants by the second and fifth defendants for their participation in the final amendment for execution by the first plaintiff.

F

[74] The first and third plaintiffs did not at any material time inform the sixth and seventh defendants or protest that the SUA was prepared without their knowledge or consent. In fact, the duly signed SUA was subsequently forwarded to the sixth and seventh defendants for stamping.

G

[75] The sixth and seventh defendants also refute the allegation that the sixth defendant created the purported resolutions under the instruction of the first defendant. They assert that they never forced the first plaintiff to sign any documents as claimed by the plaintiffs.

H

THE LAW

[76] Section 101 of the Evidence Act 1950 states that anyone seeking a court's judgment regarding a right or liability in law, based on the existence of
I specific facts, must prove that those facts exist. Naturally, when a person is responsible for proving any fact, the burden of proof lies with that person.

[77] In this action, the plaintiffs shall prove each of their allegations as pleaded in the amended statement of claim. It is a fundamental principle of law

that parties are bound by their pleadings, and the court will not decide on unpleaded matters. The Court of Appeal in *Aseambankers Malaysia Bhd & Ors v Shencourt Sdn Bhd & Anor* [2014] 4 MLJ 619; [2014] 2 CLJ 773 held that:

> (3) The parties are bound by their pleadings. The court is not entitled to decide a suit on a matter that is not pleaded. When the trial court decides on an issue that is not pleaded, the judgment can be set aside, (para 67).

[78] The primary grievance articulated by the plaintiffs in this matter is that the SA and the SUA were executed without the knowledge and consent of the first plaintiff, thereby resulting in the defendants defrauding the plaintiffs, specifically the first plaintiff, to procure their signatures.

[79] The Contracts Act of 1950 includes provisions related to fraud, consent, and coercion. Section 17 defines fraud as:

> 'Fraud' includes any of the following acts committed by a party to a contract, or with his connivance, or by his agent, with intent to deceive another party thereto or his agent, or to induce him to enter into the contract:
>
> (a) The suggestion, as to a fact, of that which is not true by one who does not believe it to be true;
>
> (b) The active concealment of a fact by one having knowledge of belief of the fact;
>
> (c) A promise made without any intention of performing it;
>
> (d) Any other act fitted to deceive; and
>
> (e) Any such act or omission as the law specially declares to be fraudulent.

[80] Section 14 of the Contracts Act 1950 provides as follows:

> 'Free Consent'
>
> Consent is said to be free when it is not caused by —
>
> (a) Coercion, as defined in section 15;
>
> (b) Undue influence, as define in section 16;
>
> (c) Fraud, as defined in section 17;
>
> (d) Misrepresentation, as defined in section 18; or
>
> (e) Mistake, subject to sections 21, 22 and 23.
>
> Consent is said to be so caused when it would not have been given but for the existence of such coercion, undue influence, fraud, misrepresentation, or mistake.

[81] Section 15 of the Contracts Act 1950 states the following:

'Coercion' is the committing, or threatening to commit any act forbidden by the Penal Code, or the unlawful detaining or threatening to detain, any property, to the prejudice of any person whatever, with the intention of causing any person to enter into an agreement.

[82] Whereas s 16(1) of the Contracts Act 1950 also states the following:

'Undue influence'

(1) A contract is said to be induced by 'undue influence' where the relations subsisting between the parties are such that one of the parties is in a position to dominate the will of the other and uses that position to obtain an unfair advantage over the other.

[83] Based on the above provisions, it must be determined whether the plaintiffs have fulfilled all the criteria specified in those provisions.

STANDARD OF PROOF FOR FRAUD

[84] The Federal Court in the case of *Sinnaiyah & Sons Sdn Bhd v Damai Setia Sdn Bhd* [2015] 5 MLJ 1 has held that there are only two standards of proof for fraud: beyond a reasonable doubt for criminal cases and the balance of probabilities for all civil cases, even if criminality is alleged. Paragraphs 49 and 50 of the said judgment, state that:

[49] With respect, we are inclined to agree with learned counsel for the plaintiff that the correct principle to apply is as explained in *In re B (Children).* It is this: that at law there are only two standards of proof, namely, beyond reasonable doubt for criminal cases while it is on the balance of probabilities for civil cases. As such even if fraud is the subject in a civil claim the standard of proof is on the balance of probabilities. There is no third standard, and '(N)either the seriousness of the allegation nor the seriousness of the consequences should make any difference to the standard of proof to be applied in determining the facts'.

[50] Hence, it is therefore up to the presiding judge, after hearing and considering the evidence adduced as being done in any other civil claim to find whether the standard of proof has been attained. 'The inherent probabilities are simply something to be taken into account, where relevant, in deciding where the truth lies'. The criminal aspect of the allegation of fraud and the standard of proof required thereof should be irrelevant in the deliberation.

[85] Thus, based on the principle established in *Sinnayah*'s case, this court will evaluate the evidence and facts presented to determine whether the plaintiffs have proven their case on a balance of probabilities regarding the particulars of fraud alleged.

ANALYSIS AND FINDINGS OF THIS COURT

[86] After perusing the plaintiffs' entire pleadings and the evidence before this court, the court found that the plaintiffs' main complaints in this case are as follows:

(a) the SA dated 11 February 2014 (P44) was signed without the first plaintiff's voluntary consent. At the time of signing the SA, the first plaintiff was subjected to threats, intimidation, duress, coercion, undue influence, and fraud from the defendants;

(b) the SUA dated 3 March 2014 (P50) was prepared without the plaintiffs' consent or knowledge. The first plaintiff claimed that she was compelled to sign the SUA;

(c) due to these complaints, the plaintiffs sought a declaratory order stating that all related documents signed by them were null, void, and had no legal effect; and

(d) the plaintiffs also claim damages.

[87] The clauses that became the subject matter of the claim in the settlement agreement dated 11 February 2014 were the recitals and cll 1 and 2. The parties involved in the SA were the first defendant and the first and second plaintiffs. In the SA, 'LKE' was referred to as the first defendant, while 'THE' was referred to as the first plaintiff. For ease of reference, the clauses for the Recitals 1, 2, and 3.6 are reproduced as follows:

RECITALS:

(A) LKE and THE are equal shareholders and directors of BLUE STAR MOULDING SDN BHD (Company No 749394-P) (hereinafter referred to as 'BSM'), a company carrying out the business of timber moulding. The management of BSM's business was solely entrusted onto THE.

(B) LKE is also an equal shareholder and director of BLUE STAR SAWMILL SDN BHD (Company No 749789-K) (hereinafter referred to as 'BSS'), a company carrying out a sawmill business. BSS is also one of the suppliers of timbers to BSM.

(C) THE is a majority shareholder and director of DTSB, a company carrying out the business of sawn timber trading.

(D) LKE is having disputes with THE and/or DTSB on the management of BSM.

(E) LKE is claiming from THE and/or DTSB damages for the losses suffered due to such disputes and THE and/or DTSB had earlier made a proposal for a separation scheme and to pay LKE a specific sum of money as full and final settlement of the disputes.

(F) The Parties are desirous to settle the dispute amicably and have agreed to enter

into this Agreement upon the terms and conditions herein contained.

IT IS HEREBY AGREED as follows:

1. SETTLEMENT

1.1 LKE shall resign as director of BSM and shall cause the transfer of all his shares in BSM to THE. Both the resignation and the shares transfer shall take effect after THE has complied with all the obligations imposed on her under the Agreement.

1.2 Notwithstanding the provision of Clause 1.1, above, all current and futire debts, liabilities, taxes and/or all advances made by clients of BSM as at the date of this Agreement shall solely be the responsibility of THE and its new shareholders (if any). THE and/or DTSB hereby agrees to indemnify and keep LKE indemnified against any claim and/or suit brought against BSM by any party in relation to such debts, liabilities and/or taxes.

1.3 Simultaneously with the execution of the Agreement, THE and/or DTSB shall pay or cause to be paid to BSS a sum of Ringgit Malaysia Nine Million Seven Hundred Fifty Nine Thousand Seven Hundred Forty Two and Sen Thirty Two (RM9,759,742.32) only owing by BSM to BSS for the timber stocks purchased from BSS in nine (9) post dated CIMB Bank cheques all dated 28 February 2014 as follows:

1	015788	1,115,437.97
2	015789	1,223,297.88
3	015790	1,155,064.66
4	015791	1,269,654.56
5	015792	1,125,512.18
6	015793	894,622.96
7	015794	1,510,412.62
8	015795	1,128,088.34
9	015797	337,651.15
	TOTAL	9,759,742.32

1.4 THE and/or DTSB shall pay LKE a sum of Ringgit Malaysia Four Million (RM4,000,000.00) only in four (4) post-dated cheques as follows:

1	30 June 2014 / CIMB 014910	1,000,000.00
2	31 August 2014/CIMB 014911	1,000,000.00
3	31 October2014/CIMB 014912	1,000,000.00
4	31 December 2014/ CIMB 014913	1,000,000.00
	TOTAL	4,000,000.00

1.5 Simultaneously with the execution of the Agreement, THE shall cause BSM to surrender to BSS the following four (4) company cars (hereinafter collectively referred to as 'the company Cars') together with the relevant signed transfer forms and documents of ownership free from encumbrances:

1	Range Rover	WXN 115
2	Lexus	WPQ 8666

3	Mercedes Benz	WUD8666
4	Toyota Vellfire	WWG 1115
5	Toyota Estima	WXT 9803

1.6 All forklifts, machineries, and movable assets registered under BSM (hereinafter collectively referred to as 'the Machineries') shall be transferred free from encumbrances to BSS within twenty-one (21) days from the date of this Agreement THE shall provide LKE with a list of the Machineries within seven (7) days from the date of this Agreement.

1.7 All remaining timber stocks in the premises of BSS, including sixty (60) containers of moulding finished product worth Ringgit Malaysia Ten Million only (RM10,000,000.00) only (hereinafter referred to as ('the Moulding Finished Products'), together with semi-finished, kiln-dry dry and seasoning stocks of five thousand five hundred (5500) tons worth approximately Ringgit Malaysia Fifteen Million (RM15,000,000.00) only herein shall be transferred to BSS. THE shall take steps to sell and guarantee that the Moulding Finished Products will be sold within one (1) year from the date of this Agreement and THE shall cause that all payments for the sale of the Moulding Finished Products are remitted by the buyers directly to BSS. THE shall provide with a list of the stocks under this Clause to LKE within seven (7) days from the date of this Agreement.

1.8 The available stocks in Harvest Court Industrial Berhad including one thousand five hundred (1500) tons of sawn timber purchases by DTSB from Perak Industrial Corporation Sdn Bhd, together with more than one hundred eighty (180) tons of merbau, shall be transferred to BSS and DTSB shall issue Harvest Court Industrial Berhad a release letter as appended herein as Appendix 1 releasing its ownership to the stocks and that BSS shall have the right to them.

1.9 THE and/or DTSB shall transfer or cause to be transferred the following properties (hereinafter collectively referred to as 'the Properties') free from encumbrances to LKE within two (2) months from the date of this Agreement and THE hereby guarantees that each of the Properties shall have the following market value:

i. One (1) unit of four and half (4 1/2) storey shop lot held under DS(D) 98077 PT 16221 Mukim Batu, District of Kuala Lumpur, State of Wilayah Persekutuan KL worth Ringgit Malaysia Three Million Six Hundred Thousand (RM3,600,000,00) only at Selayang;

ii. One (1) unit of double-storey garden office held under Geran 18054 Lot 110482 Mukim Hulu Kinta, District of Kinta, State of Perak, worth Ringgit Malaysia One Million Six Hundred Thousand (RM1,6000,000.00) only at Ipoh Garden;

iii. One (1) unit of shop lot held under PN57802 Lot 106702 Mukim Hulu Kinta State of Perak worth Ringgit Malaysia Three Hundred Fifty Thousand (RM350,000.00) only at Persiaran Bercham;

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iv. One (1) piece of land held under GM 3515 Lot 8639 Telok Mengkuang, Mukim Teluk Panglima Garang, District of Kuala Langat, State of Selangor, worth Ringgit Malaysia Three Million (RM3,000,000.00) only at Kiang;

B

v. One (1) piece of land held under GM 3516 Lot 8640 Nibong Dengkil, Mukim Teluk Panglima Garang, District of Kuala Langat, State of Selangor, worth Ringgit Malaysia Three Million (RM3.000,000.00) only at Kiang; and

C

vi. THE's half (1/2) share of One (1) piece of land held under PN 154265 Lot 774, Mukim Hulu Kinta, State of Perak, worth Ringgit Malaysia Two Million Four Hundred Thousand (RM2,400,000.00) only at Ipoh Town.

LKE shall also be entitled to dispose and/or deal with the Properties in whatever manner he deems fit.

D

1.10 All stamp duties incurred in giving effect to the transfer of LKE's share in BSM to THE, as well as the transfer of the Properties, the Company cars and the Machineries (if any) shall solely be borne by THE. THE shall also pay all legal fees charged by solicitors to be nominated and appointed by LKE to give effect to the transfer of the shares, the Properties, the Company cars and the Machineries as agreed by the Parties herein.

E

1.11 All relevant documents and forms to give effect to the transfer of the Properties, the Company cars and the Machineries shall be signed in escrow by THE, DTSB and/or their current registered owner(s) and delivered to LKE within seven (7) days from the date of this Agreement.

2. CONDITION OF SETTLEMENT

F

2.1 It is hereby agreed that the settlement arrangement in this Agreement shall be deemed to be construed as a full and final settlement of the disputes between the Parties herein.

G

2.2 Notwithstanding the above provision, in the event THE and/or DTSB fails to comply with any of the terms contained herein, this Agreement shall forthwith be deemed terminated and LKE shall be at liberty to proceed with whatever recourse available under the law to recover his losses without further reference to THE and/or DTSB.

...

H

3.6 Variation of Terms

It is hereby expressly agreed and declared by the Parties that, notwithstanding any of the provisions of this Agreement may at any time and from time to time be varied or amended by means of letters, or Supplemental Agreement or such other means as the Parties may agree from time to time and thereupon such amendments the variations shall be deemed to have been amended or varied accordingly and shall be read and construed as if such amendments and variations have been incorporated

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into and had formed part of this Agreement at the time of execution hereof. A

[88] As for the SUA dated 3 March 2014, the parties involved were the same as in the SA dated 11 February 2014.1 reproduce here the respective clauses that were referred to by the parties as follows: B

RECITALS:

(A) Pursuant to a Settlement Agreement dated 11.2.2014 (hereinafter referred to as the 'SA'), the parties herein agreed to settle all disputes and claims by LKE against THE and DSTB upon the terms and conditions contained therein.

(B) At the request of THE and DTSB, the parties have mutually agreed to add, modify and alter the terms and conditions of the SA as contained in this Agreement. C

IT IS HEREBY AGREED as follows:

1. The parties hereby agree that the 9 post-dated cheques referred to in Clause 3.1 of the SA shall be presented for payment to LKE on 28th March 2014 or on any earlier date as may be notified in writing by THE to LKE. D

2. THE shall pay all monthly payments (or hire purchase payments) and outstanding arrears to all financiers, bankers and/or lessors for all forklifts referred to in Clause 1.7 of the SA until 28.2.2014 AND LKE shall thereafter continue such payments from 01.02.2014 until completion of all monthly or periodical payments due and payable for all forklifts. E

3. Notwithstanding Clause 1.7 of the SA, LKE and/or BSS shall have option to sell any or all Moulding Finished Products stored in the 60 containers at BSS premises at Sungai Dua, 28600 Karak, Pahang Darul Makmur. BSS shall forward copies of sale invoices to THE for any sale in respect of the Moulding Finished Products. F

4. 1 The terms and conditions of this Supplementary Agreement shall be discharged by performance alone. In the event any of the parties hereto shall default in any of its obligations and covenants herein, the non-defaulting Party shall be entitled to the remedy of specific performance of the terms and conditions of this Agreement against the defaulting Party, without prejudice to any of the non-defaulting Party's legal rights or remedies available at law or in equity for such default by the defaulting Party in the performance of the terms and conditions of this Agreement. G H

5. Save and except for the terms and conditions revised by this Supplementary Agreement, the rest of the terms and conditions of the SA shall remain in force and effect however, in the event of any conflict or ambiguity arising in the SA then the terms, purpose and intention of this Supplementary Agreement shall prevail. I

6. The Parties hereby confirm, represent and warrant that in the execution

and delivery of the SA and this Supplementary Agreement, they have sought, obtained and relied upon their own independent legal advice and hereby acknowledge that they have accepted and entered into the SA and this Supplementary Agreement on the basis of and in full reliance upon the confirmations, representations and warranties contained in the SA and herein.

7. Notwithstanding anything hereinbefore contained, the parties hereby agree that their relationship as governed by the SA and this Supplementary Agreement shall be acted upon and conducted by the parties in utmost good faith.

8. The SA and this Supplementary Agreement are governed by and shall be construed in accordance with the laws of Malaysia and any dispute shall be submitted to the Courts in Malaysia at Kuantan, Pahang Darul Makmur.

9. Each party shall bear their own costs and expenses incidental to the preparation of this Supplementary Agreement; however, the stamp duty payable shall be borne by LKE.

WHETHER THERE WAS THREAT, DURESS, UNDUE INFLUENCE, OR FRAUD COMMITTED BY THE FIRST TO FIFTH DEFENDANTS AGAINST THE PLAINTIFFS.

[89] From the facts presented above, this court evaluates some of the material facts and evidence shown before it that led to the signing of the SA and the SUA. The first plaintiff claimed she was threatened and under duress to sign both the SA and SUA. The chronology of events that occurred from 27 January 2014 to 17 February 2014 will demonstrate whether the allegations are true.

DATES	CHRONOLOGY OF EVENTS
27 January 2014	1.1 The third and fourth defendants are friends of the first plaintiff who are businessmen. Both visited the first plaintiff in her office. 1.2 No police report was made by the first plaintiff and her staff. 1.3 The office security features two magnetic doors controlled by Choo Lai Yee ('CLY'). 1.4 The third and fourth defendants entered and exited the office multiple times, which gave the first plaintiff and her staff the chance to prevent them from entering again, but this did not occur on that date. 1.5 The first plaintiff invited the fourth defendant back to the office late at night and handed over her offer to the first defendant along with 15 cheques for RM15m for onward transmission to the first defendant.

DATES	CHRONOLOGY OF EVENTS
	1.6 The first plaintiff instructed CLY to prepare and send replacement invoices to Mike Moscoe via email. (The email was sent on 27 January 2014 at 10.06pm Malaysian time). 1.7 The first plaintiff sends another email day days later, on 29 January 2014 to Mike Moscoe, pleading for HELP to replace the invoices. 1.8 They had telephones that could have been used to call the police, but no such call for help was ever made.
30 January 2014	2.1 The third defendant made an appointment on 29 January 2014 for the meeting. The first plaintiff could have rejected the appointment, but her conduct demonstrates that she was willing to meet him on 30 January 2014. 2.2 There are two magnetic security doors controlled by CLY. 2.3 No police report made by the first plaintiff or her staff. 2.4 The second defendant returned the RM15m cheques to the first plaintiff and only collected RM9.7m (which is about RM5.3m less in cheques). 2.5 CLY wrote down the calculation for the amount owed to BSS. 2.6 The second defendant signed the acknowledgment of receipt for the cheques totalling RM9.7m (P43). Signing the acknowledgment receipt demonstrates no threats, etc. 2.7 The first plaintiff had a discussion with the fifth defendant to explain her offer dated 27 January 2014 and requested the fifth defendant to help arrange for a meeting with the first defendant.
7 February 2014	3.1 The third defendant scheduled the meeting for 7 February 2014. 3.2 Again, access to the DTSB office is regulated by two magnetic doors managed by CLY, and there was no police report. 3.3 The first and third defendants met the second plaintiff at the coffee shop. The second plaintiff neither made a police report nor went to the DTSB office. 3.4 The second plaintiff had Chinese tea with the first and third defendants.

DATES	CHRONOLOGY OF EVENTS
	3.5 CLY typed the settlement arrangement dated 7 February 2014, which captures the offer of settlement signed by the first defendant and the first plaintiff. 3.6 P44 includes a 'without prejudice' phrase, indicating that the first plaintiff was free to renege or withdraw her offer at any time after 7 February 2014 (but before 11 February 2014). 3.7 The first plaintiff never protested for the fifth defendant to obtain the services of a lawyer to formalise the settlement agreement.
10 February 2014 and 11 February 2014	4.1 The first and third plaintiffs send copies of the issue document of title for the six properties via email to Ying Thying and Wong to complete the information in cl 1.9 of the SA regarding the particulars of the properties. 4.2 The meeting occurred via an appointment arranged by the third defendant. The first plaintiff could have rejected the appointment, but that did not happen on that day, 4.3 Again, access to the DTSB office is through two magnetic security doors controlled by CLY. 4.4 Again, no police report was ever made by the first plaintiff or the staff. 4.5 The draft SA was amended three times at the first plaintiff's request, during which certain clauses were removed as requested by her. 4.6 The first plaintiff signed every single page of the SA. 4.7 The stamped copy of the SA was delivered to the first plaintiff on 3 March 2014 and she never protested or rejected it.
17 February 2014	5.1 The meeting was arranged by the fifth defendant through SMS on 13 February 2014. 5.2 The first plaintiff confirmed the time and date of the meeting and was aware of its purpose; this fact is supported by the following unchallenged evidence: 'DH (fifth defendant): Mdm Tan, hari Isnin kita nak datang pejabat u nak sign semua dokumen yang berkaitan, jam berapa saya boleh sampai. THE: Good morning, Dato, Monday afternoon would be ok. DH: Ok. Tq Madam'. 5.3 On 17 February 2014, the first plaintiff and/or the second plaintiff signed the following documents:

DATES	CHRONOLOGY OF EVENTS
	(a) *Borang Pindah Milik Tanah* (Form 14A) for all six properties described in cl 1.9 of the SA; (b) transfer form for the vehicles and forklifts outlined in cll 1.3 and 1.6 of the SA; (c) Director's Circular Resolutions signed by the first plaintiff regarding the vehicles and forklifts; and (d) DTSB Director's Circular Resolutions for the properties owned by DTSB as described in cl 9.1 of the SA, signed by the first and second plaintiffs. 5.4 The sixth defendant sent the DTSB resolutions to Foo Yau Geem ('FYG' — SP4) via a letter dated 5 March 2014, and FYG duly certified the resolutions in her letter dated 11 March 2014. 5.5 The consent to transfer forms for the DTSB properties were sent by the sixth defendant to FYG's office via a letter dated 2 April 2014, and DTSB returned the document duly executed by the first and second plaintiffs through their letter dated 11 April 2014 (signed by Ms Lau, ie, Kelly Lau). 5.6 The first plaintiff paid the sixth defendant RM389,300.48 vide her CIMB cheque dated 18 March 2014. (NB, the first plaintiff has not sued for the return of the payment of the said RM389,300.48) 5.7 Again, there was no police report on 17 February 2014 and there was a two-tier security level at the DTSB office. 5.8 SMS between the second defendant and the first plaintiff on the evening of 17 February 2014, where the first plaintiff assists the second defendant in booking containers, which demonstrates that no threats were made.

[90] This court, in assessing the evidence presented, found no indications in the plaintiffs' actions that they had been threatened, coerced, or intimidated by the defendants. Firstly, the plaintiffs never filed a police report at the time when such intimidation and coercion were alleged to have occurred. From the timelines of events mentioned above, it is evident that the plaintiffs' conduct did not align with the purported actions of the defendants.

[91] This court also refers to the oral evidence by the first plaintiff, Choo Lai Yee, and Kelly, which contradicts their pleadings, as Kelly could not substantiate the questions regarding 'time' stated in her own written statement.

Furthermore, this is what CLY stated during cross-examination:

> 711Q: I put it to you that you, Kelly, Lim Hui Jin, and Tan Hoo Eng all came to Court and lied and told stories about them coming to your office and setting (threatening) them from 11 o'clock onwards?
>
> A: Yes, sure, they came up to the office but the actual time, I cannot tell. I only estimated.
>
> 712Q: You also say that when Eric and Ah Keong came to the office, Tan Hoo Eng called you to the room. Based on the evidence here, what time did Tan Hoo Eng call you into the room?
>
> A: I cannot recall the time.
>
> 713Q: Can I take it from now that you cannot recall any time?
>
> A; (No answer)
>
> 714Q: Do you know the meaning of signing this (witness statement) and it is a very serious thing, right?
>
> A: (No answer)

[92] The plaintiffs' evidence regarding the various times the third and fourth defendants visited the office of DTSB is inconsistent, contradictory, and un proven.

[93] Furthermore, the following evidence demonstrates that the first plaintiff and Choo Lai Yee were in complete control of all visitors to their office, and they can disallow any person from entering the office at any time if they feel intimidated and fear for their safety. From the evidence presented to this court, the office security and the entrance to the DTSB office are secured by two magnetic locking systems, one located at the bottom of the stairs and the other before the entrance to the office on the first floor.

[94] The first plaintiff admitted that the security features in the DTSB office provide her the option to allow or deny entry to individuals. Choo Lai Yee also acknowledged that the second door has glass, enabling her to see who wishes to enter the DTSB office. Choo Lai Yee sits directly in front of the door, allowing her to observe everyone who approaches the office. Lim Hui Jin (SP5) presented the floor plan of the office (see encl 49A p 72 exh D274), marking the staff seating locations and confirming the office's security features. Additionally, the office is equipped with telephones.

[95] Hence, DTSB's office has adequate security and access to assistance. This indicates that they could have called for help or prevented the third and fourth defendants from re-entering the office, it is important to note that the third and fourth defendants went up and down the stairs of DTSB several times

(they are both smokers and DTSB is a nonsmoking office).

[96] This court also considered that no police report was lodged regarding the incidents in which the plaintiffs experienced threats and intimidation from the defendants. Choo Lai Yee, Kelly, Lim Hui Jin, and the second plaintiff all provided evidence of threats and/or intimidation. The threats are serious in nature. In fact, Choo Lai Yee in her evidence said, 'I will say one day they will kill us'.

> Yes, they went into Madam Tan's room, they requested for everything, They pushed her, threatened her to ask for more.

[97] Surprisingly, none of them ever filed a police report on 27 January 2014 (or soon after), nor did they contact the police at all. Kelly mentioned that the first plaintiff was shivering, crying, and suffocating but was cured with 'minyak angin'.

[98] Additionally, despite the so-called serious threats to the first plaintiff, they successfully emailed Mike Moscoe at 10.08pm Malaysian time (6.08 pm US time). This email shows that the first plaintiff, Choo Lai Yee, was able to request Mike Moscoe to change numerous DTSB invoices and replace them with BSM invoices at 10.08pm.

[99] This illuminating evidence was presented to the first plaintiff during cross-examination to demonstrate that the DTSB office was operational and not under any threat, intimidation, or fear. In fact, they were busy altering invoices to conceal their wrongdoings by selling BSM products to Mike Moscoe while invoicing under DTSB. In a subsequent email dated 29 January 2014 (ie, two days later), the first plaintiff wrote to Mike Moscoe pleading for his assistance:

> Subject: HELP!!!
>
> Dear Mr. Moscoe,
>
> Please help us replace these invoices accordingly per our earlier request. Our internal Account between Dyera/BSM shows payment from TMS to Dyera were balance with BSM account as of today.
>
> Sad to mention BSM is owing to Dyera 7.5 million Ringgit which will be completely wipe out.
>
> BSM is now left with total liabilities and no CASH!!!
>
> Mr. Moscoe, we are very very sorry to inform you Dyera-Tim may not be around to service you in the near future. We may loss everything in a SUPER BIG CLAIM from Blue Star Sawmill.

A Thank you very much for your KIND HELP!! We appreciate all the help you have rendered to us.

[100] The contents of the email to Mike Moscoe reveal significant insights into the plaintiffs' conduct. In my opinion, the contemporaneous documents B demonstrate a serious inconsistency regarding the threats and intimidation they claimed to have received from the defendants. In fact, the first plaintiff's behavior clearly indicates insincerity and manipulation on her part.

C **[101]** On 27 January 2014, the first plaintiffs office prepared the mutual agreement to be delivered to the first defendant. The first defendant did not agree to the first plaintiff's proposals contained in the mutual agreement. However, the facts surrounding the issuance of this mutual agreement demonstrate that there were no threats, intimidation, or force allegedly made D by the third and fourth defendants. In this regard:

(a) the first plaintiff admitted that this mutual agreement was prepared around 10.30pm. The evidence from the fourth defendant's telephone bill shows that the fourth defendant (and the third defendant) was not in E the first plaintiffs office at that time. They only returned to the first plaintiffs office at 10.42pm. This fact was also acknowledged by the first plaintiff during cross-examination. Therefore, the third and fourth defendants were not in the office when the mutual agreement was prepared;

F (b) the first plaintiff issued fifteen cheques totaling RM15m and delivered them to the fourth and third defendants on the 27 January 2014. The first plaintiff acknowledged the issuance of the cheques in document P34, amounting to RM15m;

G (c) the first plaintiff issued a letter dated 27 January 2014 acknowledging receipt of the RM5m cheque. The first plaintiff admitted that the fourth defendant acknowledged receipt of this cheque by D80; and

(d) the first plaintiff also produced five payment vouchers prepared by her office and signed by the fourth defendant.

H

Therefore, this series of contemporaneous documents clearly indicates that there was an offer made by the first plaintiff to the first defendant, as evidenced by documents prepared in her office without any threats or intimidation.

I **[102]** Based on the evidence before this court, I find that the allegations against the defendants do not align with the contemporaneous conduct of the plaintiffs. Collectively, the evidence demonstrates that:

(a) the impression given by the first plaintiff and her witnesses that the third

and fourth defendants behaved like gangsters — banging tables, kicking a chair, and so forth — instilling fear in them (shivering, crying, suffocating, etc) was false and untrue;

(b) by a letter dated 30 January 2014, the first defendant rejected the first plaintiff's offer in exh P36 and returned all the cheques totaling RM15m. The second and fifth defendants were subsequently given RM9,759,742.32 in nine post-dated cheques to settle BSM's debt to BSS. This amount of RM9,759,742.32 was based on the calculations of the actual debt owed by BSM to BSS. In my considered opinion, no one would return or reject a cheque for RM15m only to exchange it for RM9,759,742.32;

(c) there was no police report from any of the plaintiffs' witnesses alleging a threat made at that time;

(d) there was not a single letter of protest from any of the plaintiffs regarding the transactions and/or dealings on 30 January 2014;

(e) the meeting was arranged by appointment. The first plaintiff could have rejected meeting them;

(f) the office security system was managed by the plaintiffs, yet they still permitted the defendants to be in the office;

(g) on 30 January 2014, second and fifth defendants returned RM15m worth of cheques and only received RM9,759,742.32. This court agrees with the learned counsel's submission for D1-D5 that gangsters would not accept such a lesser amount;

(h) there was never a demand for RM25m made by the first, second, third and/or fifth defendants on 30 January 2014;

(i) the contemporaneous documents show that there was no demand for RM25m;

(j) the contemporary documents from 30 January 2014, reveal the following facts. The letter merely states that the first plaintiff's offer has been rejected, the RM15m cheques have been rejected, and the first defendant gives notice of his intention to commence legal action. On the same date, the first plaintiff issued a letter enclosing post dated cheques totaling RM9,759,742.32, which was duly acknowledged by the second defendant. On 30 January 2014, the second and fifth defendants went to meet the first plaintiff in Ipoh, where the second defendant delivered the first defendant's letter from 30 January 2014, along with the RM15m worth of cheques to the first plaintiff. The third defendant made the appointment with the first plaintiff for the meeting;

(k) during this meeting, the second and fifth defendants explained to the first plaintiff that part of the payment offered by the first plaintiff,

amounting to RM10m in reference to para 2 of her letter dated 27 January 2014 (exh P36), was incorrect as the actual amount was only RM9,759,742.32. Subsequently, the first plaintiff issued a letter dated 30 January 2014 and provided nine post-dated checks totaling RM9,759,742.82. This calculation was noted by Choo Lai Yee on a piece of paper. No agreement was reached regarding the other matters mentioned in the first plaintiffs offer dated 27 January 2014. However, the first plaintiff spoke to the fifth defendant and requested his assistance in asking the first defendant to meet with her;

(l) without a doubt, the first plaintiff and her family never filed a police report, nor were they detained during Chinese New Year;

(m) the contemporaneous documents arising from 30 January 2014 demonstrate formal and standard business conduct. There was no evidence to indicate that the second and/or fifth defendant demanded property and/or assets;

(n) after receiving the first plaintiff's proposal dated 27 January 2014 (P36), the first defendant met with the second and fifth defendants on 29 January 2014 to discuss it. Upon reviewing the proposal, the first defendant was unsatisfied due to the lack of explanation regarding what happened to BSM's business and how the first plaintiff obtained the money and the amount of timber mentioned in her proposal;

(o) the fifth defendant conveyed the first plaintiffs request to the first defendant, who agreed to meet with the first plaintiff. The first defendant then asked the third defendant to make an appointment to meet the first plaintiff. The appointment was scheduled for 7 February 2014 (see exh P44). The first, second, third, and fifth defendants met the first plaintiff at her office in Ipoh. After speaking with the first plaintiff, the first defendant and the third defendant left the office and went to a nearby coffee shop. The meeting continued between the first plaintiff, second, and fifth defendants, during which the following matters were discussed:

(i) the fifth defendant suggested conducting a forensic audit on BSM;

(ii) the first plaintiffs wrongdoings were discussed;

(iii) the first plaintiff declined a forensic audit and suggested a settlement involving property, cash, vehicles, forklifts, and stocks; and

(iv) it was agreed that a solicitor would be appointed to prepare a formal agreement and the fifth defendant was asked to handle this.

(p) an agreement was reached in which the main features were documented in writing and signed by both the first plaintiff and the first defendant.

There was no evidence to indicate that the first defendant and the second defendant made any demands on the first plaintiff. On the contrary, the offer that led to the settlement agreement originated from the first plaintiff via a letter dated 27 February 2014 (P36);

(q) thereafter, they left the first plaintiff's office, and the fifth defendant was to obtain the service of a solicitor to prepare a settlement agreement;

(r) regarding the SA dated 7 February 2014 signed by the first plaintiff and the first defendant (see exh P44), the SA outlines all obligations of the parties. A stamped copy of the SA was delivered to the first plaintiff via the sixth defendant's letter dated 3 March 2016. The first plaintiff fulfilled all her obligations as specified in the entire SA, except for the redemption of one property;

(s) this is evident in cl 1.3, which refers to nine post-dated cheques totalling RM9,759,742.32. These cheques were delivered by the first plaintiff to the second defendant on 30 January 2014, prior to the SA, where the parties had settled the amount as shown in exh P28;

(t) additionally, this court is also evaluating the SUA signed by the parties. This SUA originated when the first plaintiff requested certain amendments and/or changes to her obligations in the SA. In a letter dated 25 February 2014 (D86), the first plaintiff wrote to the first defendant requesting a postponement for the presentation of the nine cheques totaling RM9,759,742.32;

(u) this request is also captured in the SMS message between the fifth defendant and the first plaintiff on 25 February 2014, which states as follows:

Dato Halim: Mdm dengar cerita u minta Tangguh cek betul ke?

Tan Hoo Eng: Ya Dato kerana saya perlu sedikit masa.

Dato Halim: U bagi sedikit bukti pasal loan saya boleh tolong u bincang dengan Mr Lim.

Tan Hoo Eng: Ok terima kasih.

Dato Halim: Bila u nak bagi loan punya bukti.

Tan Hoo Eng: Esok minta dari Bank.

Dato Halim: Ok u email saya ok mdm saya bantu u.

Tan Hoo Eng: Seribu terima kasih.

Dato Halim: Esok saya cal u mdm.

Tan Hoo Eng: Ok.

The first plaintiff and fifth defendant met on 26 February 2014:

Dato Halim: Mdm jam 11 sampai pejabat u

Tan Hoo Eng: ok tq. (Refer to D76.)

(v) during the meeting, the parties discussed postponing the cheques and having the first defendant absorb the leasing payments for the forklift. The SA must be full and final, meaning the first defendant cannot claim anything beyond what is outlined in the SA. The first plaintiff also expressed a desire to remove her guarantee on the sale of the stocks;

(w) hence, the SUA dated 3 March 2014 was prepared and signed by the first plaintiff and the first defendant; and

(x) it is important to note that the plaintiffs made no complaints about the SA nor terminated the SA from 11 February 2014 until 3 March 2014.

RESOLUTIONS AND TRANSFER FORMS

[103] The first plaintiff/DTSB alleged that there were no valid resolutions or director meetings by DTSB and BSN to execute the relevant documents. According to the first plaintiff/DTSB, the sixth defendant delivered the company resolutions to the first plaintiff without her knowledge, consent, or instructions, and the first plaintiff/DTSB does not know who prepared the company resolutions, believing that they were prepared by the sixth defendant at the direction of the first defendant. The first plaintiff/DTSB alleged that they were coerced into signing the resolutions and the transfer forms.

[104] The schedule of resolutions for BSM regarding the transfer of vehicles and forklifts, along with the resolutions signed by DTSA concerning the three properties belonging to DTSB (GM 18054 Lot 110482 Mukim Hulu Kinta, Daerah Kinta Perak, PN 57802 Lot 106702 Mukim Hulu Kinta, Perak, and PN42431 Lot 56897 (formerly HS(D) 92077 FT 16221) Bukit Batu Daerah Kuala Lumpur), can be found in encl 49A.

[105] All resolutions regarding the vehicles and properties have been certified as true by the company secretary of BSM. The first plaintiff/DTSB has signed all resolutions, transfer forms, and consents to transfer, and has even issued a cheque for RM389,300.48 (the sixth defendant's legal fees). These facts were acknowledged by the first plaintiff during cross-examination. SP4 (Foo Yau Geem), the company secretary of DTSB, confirmed in his testimony that the three resolutions (P54, P55, and P56) are circular resolutions and may be signed by the directors (first and second plaintiffs) without requiring a board meeting.

[106] There is nothing wrong with the sixth defendant regarding the preparation of the resolutions. These resolutions were sent to BSM's company

secretary for verification on 5 March 2014 and were never rejected by the company secretary. The contemporaneous documents and actions of the parties demonstrate that the transfer of the properties resulted from negotiations reflected in the SA based on the first plaintiff's offer made on 7 February 2014. In fact, the first plaintiff/DTSB fulfilled all these obligations (except for the redemption of one property). For the plaintiffs to now claim that they were forced, intimidated, harassed, coerced, and defrauded into signing the SA and SUA is misplaced and without basis.

NON-COMPLIANCE WITH SS 64, 67, 132C AND 132E OF THE COMPANIES ACT 1965

[107] The plaintiffs' counsel, in their submission, raised the issues of the defendants' non-compliance with ss 64, 67, 132C and 132E of the Companies Act 1965.

[108] The plaintiffs' counsel submitted that the purported SA was tainted with illegality, meaning it was void due to non-compliance with the mandatory provisions of the Companies Act 1965 and/or Companies Act 2016. The plaintiffs referred to the purported SA executed by the first defendant, first plaintiff, and DTSB. Although BSM and BSS were not parties to the purported SA, BSS was benefiting from it.

[109] In essence, the purported SA required BSM to transfer to BSS the following:

(a) five company cars (cl 1.5);

(b) all forklifts, machineries, and movable assets (cl 1.6); and

(c) BSM's timber is claimed to be worth RM25m (cl 1.7).

[110] The purported SA also required DTSB to transfer the following to BSS:

(a) DTSB claims 1500tonnes of sawn timber from Perak Industrial Corporation Sdn Bhd ('PIC') and 180 tonnes of Merbau (cl 1.8); and

(b) three landed properties (cl 1.9(i), (ii), and (iii)).

[111] It was further submitted that those transactions have the following effects:

(a) reducing the share capital of BSM and DTSB;

(b) having BSM provides direct or indirect financial assistance to the first plaintiff to allegedly purchase the first defendant's shares in BSM; and

(c) disposing of the significant amount of BSM and DTSB properties.

[112] It was also submitted that the aforementioned transactions violated the mandatory provisions of ss 64, 67, 132C, and 132E of the Companies Act of 1965. This suit was initiated in 2014; therefore, the relevant provisions of the Companies Act of 1965 would apply.

[113] The plaintiffs argued that there was non-compliance with s 132C regarding the assets transacted by DTSB. This section pertains to considerations involving DTSB. The provision related to substantial property transactions of a company requires a shareholders' resolution at the EGM.

[114] The plaintiffs also asserted that DTSB failed to hold a general meeting to obtain shareholder approval for the disposal of a significant portion of the company's properties. Consequently, the transactions in the alleged SA are void.

[115] This court has reviewed the entire re amended statement of claim filed by the plaintiffs, along with the evidence presented by both parties. This court finds that the plaintiffs' case does not rest on the Companies Act; rather, it is fundamentally based on threats, intimidation, duress, coercion, undue influence, and/or fraud.

[116] The facts showed that there was no pleading for the reduction of capital, nor did the first plaintiff mention the reduction of capital in her evidence. Section 64 of the CA 1965 requires a special resolution for the reduction of share capital, and the plaintiffs must lead evidence for any of the conditions specified under s 64, ie:

(a) extinguishing or reducing the liability of shares for unpaid share capital;

(b) cancel any paid-up share capital that is lost or not represented by available assets;

(c) pay off any paid-up share capital that exceeds the company's needs; and/or

(d) amend its memorandum by reducing the amount of its share capital and adjusting its shares accordingly.

[117] Similarly, there was no pleading or evidence presented by the first plaintiff under s 67 of the CA 1965 to demonstrate the existence of:

(a) dealing in the company's own shares;

(b) loan, guarantee, security, financial assistance; and

(c) subscription for the subsidiary.

[118] This court also found that ss 132C and 132E of the CA 1965 were not pleaded, and no evidence was presented by the plaintiffs or their witnesses.

[119] The issues raised by the plaintiffs are not ex facie illegal (ie, it is not illegal or unlawful to dispose of the company shares; it is not illegal or unlawful to reduce the company's share capital) and therefore need to be specifically pleaded. In this case, the first plaintiff never led any evidence of a breach of the provisions under the Companies Act. In my view, the factual evidence to support these allegations does not exist and is not sustainable.

[120] It is the court's finding of fact that the settlement agreement in question is not a sale of shares agreement. This is not a situation where the company provides financial assistance to the purchaser for buying the company's shares. In short, this is not a matter of utilising the company's assets to purchase shares. The sixth defendant (SD2), who prepared the SA, never stated in his testimony that the SA and SUA constituted a share sale agreement. In fact, the sixth defendant never indicated that the transfer of vehicles and stocks served as consideration for a share sale transaction. The settlement agreement is simply an agreement for resolving certain commercial disputes between the parties, following several negotiations that took place prior to the signing of the SA and SUA.

[121] Under the SA, the plaintiffs, especially the first plaintiff, were obligated to take actions or ensure that actions were taken. In this case, this means facilitating the transfer of the company's shares and its assets. Therefore, it is the first plaintiff's responsibility to ensure that the necessary actions she must take or facilitate are carried out properly and lawfully.

[122] As for the resolutions, there is ample evidence from the company secretary (Mr Foo, SP4) that one of his roles as company secretary is to ensure that the company complies with all legal rules and regulations and to advise the company, its directors, or shareholders. He also testified that he will only sign and/or certify the documents, ie, the resolutions, if they are in order. In this case, he confirmed and certified that the resolutions are true and genuine. Nowhere in Mr Foo's evidence did he state that there was a breach of any provisions in the Companies Act regarding ss 64, 67, 132C, and 132E of the Companies Act. The noncompliance of ss 132C and 132E is very serious, as it imposes penalties of imprisonment and fines.

[123] This court of the view that, in any case, allowing the plaintiffs' submission on the non-pleaded issues would create significant injustice to the defendants' case, as they were not given the opportunity to cross-examine the

plaintiffs' witnesses on the relevant issues. The plaintiffs cannot now benefit from their own wrongdoing, having agreed to sign the SA and SUA.

ISSUE OF THREAT, UNDUE INFLUENCE/COERCION BY THE SIXTH AND SEVENTH DEFENDANTS

[124] The first plaintiff alleged that all the defendants, including the sixth defendant, compelled, threatened, intimidated, harassed, oppressed, and forced her to sign certain documents and/or act against her free will. On 11 February 2014, the first plaintiff signed the settlement agreement. On 17 February 2014, the plaintiffs signed the resolutions and transfer forms.

[125] The first defendant, through the second and fifth defendants, appointed and instructed the sixth defendant to prepare a settlement agreement. The role of the sixth defendant was to draft the settlement agreement for the parties to sign and then proceed with follow-up tasks such as preparing the transfer forms, resolutions, applications for consent, adjudication, and so forth. The sixth defendant did not draft the SA. Instead, the sixth defendant only made some amendments to the SUA that was forwarded to him for his review and approval.

[126] As pleaded by the plaintiffs, there were five visits made by the defendants from 27 January 2014 to 3 March 2014. However, it was only during the fourth visit on 11 February 2014 that the sixth defendant was present. It is indisputable that the only time the sixth defendant met with the first plaintiff was on 11 February 2014.

[127] The sixth defendant was also not present at the plaintiffs' office on 3 March 2014. In this context, events that occurred before (ie 27 January 2014, 30 January 2014, and 7 February 2014) and after (ie 3 March 2014) these dates took place without the presence of the sixth defendant. Therefore, these events were not within the sixth defendant's knowledge and were unrelated to the sixth defendant concerning the plaintiffs' allegations.

[128] This court agrees with the learned counsel for the sixth and seventh defendants' submission that the sixth defendant cannot compel the first and second plaintiffs to execute a resolution as stated in para 24 of the re-amended statement of claim. 'On the same day' as mentioned in para 24 of the re-amended statement of claim refers to '3 March 2014' (see paras 21 to 24 of the re-amended statement of claim).

[129] On 10 February 2014, the first plaintiff (through Choo Lai Yee) emailed copies of the issue document of title for the six properties to insert the information about these properties into the SA. On 11 February 2014, the

sixth defendant, together with the first defendant, second, third, and fifth defendants, visited the third plaintiff's office and met the first plaintiff at her office in Ipoh. They reviewed the SA, confirmed the terms of settlement, and executed the SA.

[130] Several amendments were made to the draft at the request of the first plaintiff. For example, the first plaintiff requested the removal of the recital 'Due to the above illicit sales benefiting the first plaintiff and DTSB, first defendant, BSM and/or BSS had suffered losses in the minimum sum of RM40,000,000'.

[131] After finalising all terms, the first plaintiff, DTSB, and the first defendant signed the SA. Before the SA was signed, the first plaintiff delivered four cheques totaling RM1m each in accordance with cl 1.4 of the SA to allow the sixth defendant to enter the cheque numbers.

[132] Subsequently, on 17 February 2014, the sixth defendant, along with the first, second, third, and fifth defendants, returned to the third plaintiff's office for the execution of several relevant transfer forms and resolutions. The sixth defendant prepared the transfer forms and resolutions at the instruction of the first defendant. There, the first defendant and the first and third plaintiffs signed the documents. The resolutions found on pp 16 to 51 of encl 49A are marked as 'D90,' 'D91,' 'D92,' 'D93,' 'D94,' 'D95,' 'D96,' 'D97,' 'D98,' 'D99,' 'D100,' and 'D101,' with p 52 of encl 49A marked as 'P54,' p 75 marked as 'P55,' and p 99 marked as 'P56.' The transfer forms are located on pp 53 to 56 marked as 'D54A,' pp 81 to 84 marked as 'D55B,' pp 123 to 126 marked as 'D102,' pp 144 to 147 marked as 'D103,' pp 165 to 168 marked as 'D104,' and pp 169 to 172 marked as 'D105' of encl 49A.

[133] In their re-amended statement of claim, the plaintiffs neither alleged nor raised issues regarding whether the execution of all these documents on 17 February 2014 at their office was conducted under duress, threat, or compulsion, nor did they claim that it was not done of their own free will. In fact, the plaintiffs failed to specify what transpired on 17 February 2014, and therefore, the court can confidently conclude that all those documents were duly and willingly signed by the plaintiffs of their own accord.

[134] Apparently, on the same day, ie, 17 February 2014, the first plaintiff issued a CIMB Bank Cheque No 014914 (D85) in the amount of RM389,300.48 made payable to the seventh defendant for professional charges and disbursements. The first plaintiff did not plead that the first defendant disagreed with or willingly gave the said cheque to the sixth defendant.

[135] Thereafter, the statutory declaration was sent to the company secretary's office along with the application for the consent form for execution, it was subsequently returned to the seventh defendant's office (refer to exh D209 and D106 of encl 76A) after execution. Therefore, the plaintiffs' claim that they were compelled to sign the statutory declaration was indeed unfounded.

[136] As for the claims made by the plaintiffs regarding the issue of 'consideration' stated in the transfer form, the sixth defendant explained why lower values were indicated in the transfer forms.

[137] Several days later, the sixth defendant was informed that further discussions had taken place and that the parties had agreed to some changes or amendments to the SA. The sixth defendant then advised the first defendant and informed the fifth defendant to create a SUA. No evidence was presented or questions directed to the sixth defendant regarding the use of a different SA for the adjudication of the transfer form.

[138] The sixth defendant did not draft the SA. He only made some amendments to the SUA that was forwarded to him for his review and vetting. Later, the stamped copy of the supplementary agreement dated 3 March 2014 was sent to the first and third plaintiffs via the seventh defendant's letter dated 12 March 2014.

[139] The evidence indicates that the very first time the sixth defendant met the first plaintiff was at the office of the third plaintiff on 11 February 2014. This meeting occurred when the first plaintiff alleged that the sixth defendant compelled or forced her to sign the settlement agreement (refer Q&A 10 and 11 at p 79 of the note of proceeding during the cross-examination of the first plaintiff). However, the first plaintiff did not clarify how and in what manner the sixth defendant compelled, forced, or threatened her to sign the settlement agreement. No specific acts of compulsion or threats were pleaded by the plaintiffs against the sixth defendant.

[140] The evidence of the first plaintiff clearly explained the actual situation that occurred when the sixth defendant met the first plaintiff. Reference was made to what the first plaintiff said at Q&A 25 to 27 and Q&A 52 on pp 82 and 86, respectively, of the note of proceeding during cross-examination:

(25) S: You don't know whether he was in your presence?

J: He was not in my presence.

(26) S: He wasn't in your presence, was he?

J: He brought the agreement for me to sign.

27) S: He was in another room, correct?

J: He was outside my office.

...

and

(52) S: But my client wasn't even with them, He was in another room and you had admitted that at the Court.

J: He was in another room for some time but he came into my room to pass me the agreement.

[141] Reviewing all the evidence presented by the first plaintiff, it is clear that she did not even state that the sixth defendant compelled, forced, or threatened her when the sixth defendant presented the agreement for her to sign.

[142] Even during the examination-in-chief, the first plaintiff refrained from elaborating or detailing the manner in which the sixth defendant compelled her. In my view, simply stating, 'I was compelled ...' is insufficient.

[143] The plaintiffs' witnesses, Miss Choo and Miss Kelly, during their examination-in-chief, did not even state that the sixth defendant had compelled the first plaintiff to sign the documents.

[144] From the evidence presented to this court, I conclude that the sixth and seventh defendants were not involved, regardless of whether the plaintiffs signed the supplementary agreement voluntarily or were coerced (which is not the case here) to do so.

[145] The sixth defendant, via the seventh defendant's letter dated 4 March 2014, forwarded all the resolutions signed by the first defendant and the first plaintiff for BSM to the company secretary for certification. The company secretary certified these resolutions and returned them to the seventh defendant. It is also important to note that the company secretary certified all the resolutions and sent them back to the seventh defendant without any protest or objection (refer to exh P52).

[146] Upon further examination, I conclude that the sixth defendant was not present at the office of the company secretary during the certification of those resolutions and therefore lacked knowledge of the interactions that occurred between the company secretary and the plaintiffs.

[147] The actions undertaken by the sixth and seventh defendants subsequently related to the follow-up works in accordance with the SA dated

A 11 February 2014 and the SUA dated 3 March 2014, respectively. These actions included, among others, lodging a caveat, adjudicating stamp duty, and submitting an application for consent.

B **[148]** From the facts and evidence presented above, this court found no evidence of force, threat, undue influence, intimidation, or fraud by the sixth and seventh defendants in securing the SA.

FOUR POST-DATED CHEQUES TOTALING RM4M TO THE FIRST DEFENDANT

C

[149] The first plaintiff/DTSB alleges that they were forced to issue four post-dated cheques worth RM4m ringgit to the first defendant. The postdated cheques are:

D (a) CIMB 014910 dated 30 June 2014 — (RM1m);

(b) CIMB 014911 dated 31 August 2014 — (RM1m);

(c) CIMB 01492 dated 31 October 2014 — (RM1m); and

E (d) CIMB 014913 dated 31 December 2014 — (RM1m).

These four post-dated cheques were issued and delivered to the first defendant by the first plaintiff on 11 February 2014. Evidence showed that the cheques were issued after negotiations and in accordance with a written contract. There F is no evidence of any coercion or threats resulting in the issuance of these cheques.

DEBT OWED BY BSM TO BSS AND NOT BY THE FIRST PLAINTIFF TO THE FIRST DEFENDANT

G

[150] Under cl 1.3 of the SA, the first plaintiff issued nine cheques dated 28 February 2014 totalling RM9,759,742.32, payable to BSS. The first plaintiff/DTSB asserts that she does not owe any debt to the first defendant; instead, if any debt exists, it is owed by BSM to BSS. The first plaintiff H maintained that she is not required to make any payment to BSS. Any payment, if applicable, should be made by BSM.

[151] The evidence before this court shows that the payment of RM9,759,742.32 is, in fact, a continuation of payments made by the first I plaintiff, which began on 14 January 2014. On the same date, the first plaintiff issued six of her personal cheques to BSS (being payment on behalf of BSM) amounting to RM4.2m. On 20 January 2014, the first plaintiff voluntarily issued two more cheques belonging to BSM, amounting to RM1.6m. On 25 January 2015, the second defendant prepared the BSS invoice to BSM

based on the first plaintiff's list and pricing. The total amount for these invoices is RM3,036,288.99, a fact admitted by the first plaintiff.

[152] Thereafter, CLY and the second defendant calculated the actual balance amount due by BSM to BSS for the BSS stocks. The first plaintiff then confirmed the balance due and issued a letter dated 31 January 2014 along with nine cheques dated 28 February 2014 for RM9,759,742.32. After reconfirming the amount and discussing the extension of time for the presentation of the nine cheques for the seventh time (from 30 January 2014, 7 February 2014, 11 February 2014, 25 February 2014, 28 February 2014, and 3 March 2014), the first plaintiff is estopped from now denying that she is responsible for putting the house in order. Even if it is true that the first plaintiff did not owe any money to the first defendant, she has not requested the return of any amounts paid by her to BSS.

[153] The first plaintiff has admitted in her evidence and through her own document that these payments were made on behalf of BSM as an advance. This court finds that the first plaintiff voluntarily issued payment to BSS from her own account since 14 January 2014. Therefore, there were no threats, force, undue influence, or fraud as alleged by the plaintiffs.

ISSUE OF VEHICLES — CL 1.5 OF THE SA

[154] The first plaintiff alleged that the vehicle belongs to BSM. The value of the vehicle is approximately RM2.6m. The facts of this case demonstrate that the first plaintiff willingly agreed to have the vehicles transferred to BSS pursuant to cl 1.5 of the SA. The vehicles were then transferred to the first defendant because of cheaper road tax. The evidence supports that the transfer of the vehicles was based on negotiations, free will, and consent.

[155] There was no evidence presented by the plaintiffs to suggest that the value of the vehicles amounted to RM2.6m. Moreover, they failed to produce any purchase invoices for these vehicles.

[156] Clause 1.5 of the SA requires the vehicles to be transferred 'free from encumbrances'. The first plaintiff paid RM328,653.03 on behalf of BSM to discharge the liability over the vehicles. This amount was paid by the first plaintiff through three separate payments made on 14 April 2014, and none of the defendants were present with the first plaintiff on that date. Therefore, this payment was made willingly by her.

[157] Sections 41 and 42 of the Contracts Act 1950 allow the third party (the first plaintiff) to make payment on behalf of BSM to BSS (see *Haji Nik Ishak bin Haji Nik Daud v Nik Zainab binti Nik Jaafar* [1975] 2 MLJ 82 (FC)

and *Kerpa Singh v Bariam Singh* [1966] 1 MLJ 38 (FC)). The first plaintiff's letter dated 31 January 2014 speaks for itself, as the payment proposal originated from her, and she cannot now claim that she was forced to pay RM328,653.03. The first plaintiff's letter dated 31 January 2014 (D110, encl 49 p 297) is referred to as follows:

> I will however, proceed to settle all whatsoever monthly repayments/instalments for the vehicles and shall forward to you the bank in slip for your record on a monthly basis. This is the best that I can do at the moment and is actually the only option that I can offer. Your understanding in the matter is required.

This court is of the opinion that the content of the first plaintiffs letter clearly proves that there was never any threat, intimidation, or similar actions by the defendants.

TIMBER STOCK ISSUES

[158] The first plaintiff alleges that BSM has remaining stock in Karak worth RM25m and that the first defendant has taken away ('telah rampas') this stock from Karak. The sum of RM25m in stock is detailed in cl 1.7 of the SA. The stock list provided by the first plaintiff is included in Appendix A attached to the SA. For ease of reference, this court refers to cl 1.7 of the SA, which states that:

> 1.7 All remaining timber stocks in the premises of BSS including sixty (60) containers of moulding finished products worth Ringgit Malaysia Tenm (RM10,000,000.00) only (hereinafter referred to as 'the Moulding Finished Products') together with semi-finished, kiln dry and seasoning stocks of five thousand five hundred (5500) tons worth approximately Ringgit Malaysia Fifteen Million (RM15,000,000.00) only herein shall be transferred to BSS. *THE shall take steps to sell and guarantees that the Moulding Finished Products will be sold within one (1) year from the date of this Agreement and THE shall cause that all payments for the sale of the Moulding Finished Products are remitted by the buyers directly to BSS. THE shall provide with a list of the stocks under this Clause to LKE within seven (7) days from the date of this Agreement*. (Emphasis added.)

[159] The first plaintiff, under cl 1.7, must ensure that the Moulding Finished Products valued at RM10m are sold within one year, on or before 12 February 2015. However, the first plaintiff did not complete any sales within the specified period and also failed to demonstrate that the finished moulding timber is valued at RM10m.

[160] On 27 January 2014, the first plaintiff made an offer to the first defendant to transfer the RM25m stock to BSS. In fact, the first plaintiff and the first defendant signed the SA on 7 February 2014, whereby the RM25m of stock is now captured in cl 1.8. The timber was initially offered by the first

plaintiff, and the plaintiffs' allegation that the stock was 'dirampas' is baseless.

[161] According to cl 1.9 of the SA, the first plaintiff agreed to transfer 1500 tons of sawn timber and 180 tons of Merbau to BSS; however, they simultaneously alleged that these stocks had nothing to do with the first defendant. On 31 March 2014, the first plaintiff/DTSB wrote to the first defendant, admitting that 50.7152 tons of the Merbau actually belonged to BSS, while 129.2848 tons belonged to DTSB. The first plaintiff did not claim that the 1500tons of timber belonged to DTSB. On 7 April 2014, the first plaintiff issued a letter to harvest court to release 180 tons of Merbau to BSS. This demonstrates the first plaintiff's free will regarding the timber.

CONCLUSION

[162] This court has thoroughly examined and considered all the issues raised, the evidence, the demeanour and testimonies of all witnesses, and the respective submissions, both written and oral. In Suit No 80, since the main issue to be proved by the plaintiffs has the same bearing on the determination of claims in Suit No 35 (Kuantan Suit), for all the aforementioned reasons, this court finds that the plaintiffs in Suit No 80 failed to prove their case on the balance of probabilities regarding all the pleaded particulars of fraud in the amended statement of claims. From the evidence, this court answers the issues in question as follows:

(a) the SA and SUA were secured freely and were not tainted by illegality, coercion, intimidation, or undue influence. The issues regarding non-compliance with the mandatory provisions were not pleaded in the statement of claims by the plaintiffs and, therefore, will not be addressed by the court;

(b) the defendants, based on the evidence and facts mentioned above, did not secure the SA through fraud, undue influence, or coercion. The evidence in this case reveals that the first plaintiff is not someone who can be easily dominated, nor is she someone who can be deceived into signing a document. In my view, the impression of 'non est factum' must be rejected;

(c) the plaintiffs have failed to prove all allegations of unlawful, wrongful, and improper conduct, including intimidation, threats, duress, oppression, and harassment. I also find that the plaintiffs have not proven all elements under ss 14, 15, 16, and 17 of the Contracts Act 1950;

(d) this court dismissed the plaintiffs' claim in Suit No 80 against the first to fifth defendants and against the sixth and seventh defendants, with costs to be paid to them separately;

(e) upon reviewing and analysing the evidence presented by both parties, I am inclined to conclude that the defendants' evidence and/or narrative appears to be more convincing than that of the plaintiffs;

(f) the plaintiff's claim in Suit No 35 (the first defendant in Suit No 80) is allowed with costs, and the counterclaim by the defendants (the plaintiffs in Suit No 80) is dismissed with costs;

(g) accordingly, the court makes the following order for Suit No 35:

(i) specific performance of the SA and SUA;

(ii) removal of caveats on the properties;

(iii) RM1,510,412.62 (bounce cheque);

(iv) RM4.68m (value of properties overstated by defendant);

(v) time order for performance; and

(vi) RM4m (post-dated cheques paid by THE).

(h) Consequential relief order in Suit No 35:

(i) the injunction order dated 9 April 2015 is set aside, and damages are to be assessed by the Registrar of the High Court.;

(ii) the performance timing is to be completed within one month from the date of service of the court's order by the defendants. Refer to para (i) above; these reliefs are to be endorsed with a penal endorsement; and

(iii) the loss of property, specifically the loss of property PN 154265 Lot 774 Mukim Hulu Kinta, is to be assessed by the Registrar of the High Court.

(i) interest at the rate of 5% on the judgment sum from the date of filing the action until full realisation;

(j) the court awarded costs as follows:

(i) costs of RM500,000 to the first to fifth defendants;

(ii) costs of RM100,000 to the sixth and seventh defendants; and

(iii) all costs are subject to an allocator's fee.

Plaintiffs' claim in Suit 80 dismissed with costs to be paid to each of defendants

separately; defendants' claim in Suit 35 allowed with costs; plaintiffs' counterclaim in Suit 35 dismissed with costs.

Reported by Dzulqarnain Ab Fatar